No. 16-1371

IN THE

# Supreme Court of the United States

TERRENCE BYRD,

*Petitioner,*

*v.*

UNITED STATES OF AMERICA,

*Respondent.*

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

## JOINT APPENDIX


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PETITION FOR WRIT OF CERTIORARI FILED
MAY 11, 2017
CERTIORARI GRANTED SEPTEMBER 28, 2017

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**United States District Court**
**Middle District of Pennsylvania (Harrisburg)**
**CRIMINAL DOCKET FOR CASE #:**
**1:14-cr-00321-WWC-1**

Case title: USA v. Byrd

Date Filed: 12/17/2014
Date Terminated: 02/24/2016

Assigned to: Honorable William W. Caldwell

| **Pending Counts** | **Disposition** |
|---|---|
| 21:841 CONTROLLED SUBSTANCE - SELL, DISTRIBUTE, OR DISPENSE (1) | Imprisonment 120 months on Count-1 and 36 months on Count-2 to run concurrently. Supervised Release 3 years on Count-1 and 1 year on Count-2 to run concurrently. Fine of $800.00 on Count-1; Special Assessment of $100.00 on each of Counts 1 and 2. |
| 18:931 PROHIBITION ON PURCHASE, OWNERSHIP OR POSSESSION OF BODY ARMOR BY VIOLENT FELON (2) | Imprisonment 120 months on Count-1 and 36 months on Count-2 to run concurrently. Supervised Release 3 years on Count-1 and 1 year on Count-2 to run concurrently. Fine of $800.00 on Count-1; Special Assessment of $100.00 on each of Counts 1 and 2. |

**Highest Offense Level Disposition (Opening)**
Felony

**Terminated Counts**
None

**Highest Offense Level Disposition (Terminated)**
None

**Complaints**
None

| Date Filed | # | Docket Text |
|---|---|---|
| 12/17/2014 | 1 | INDICTMENT as to Terrance Byrd (1) count(s) 1, 2. (aaa) (Entered: 12/17/2014) |
| 04/13/2015 | 28 | MOTION to Suppress All Evidence Resulting From the Illegal Stop of Terrence Byrd's Vehicle by Terrence Byrd. (Attachments: # 1 Certificate of Nonconcurrence, # 2 Proposed Order)(Thornton, Thomas) Modified on 4/15/2015 (pjr). (Entered: 04/13/2015) |

| Date Filed | # | Docket Text |
|---|---|---|
| 04/13/2015 | 29 | BRIEF IN SUPPORT by Terrence Byrd re 28 Unopposed MOTION to Suppress All Evidence Resulting From the Illegal Stop of Terrence Byrd's Vehicle Brief in Opposition due by 4/30/2015 (Attachments: # 1 Exhibit(s))(Thornton, Thomas) (Entered: 04/13/2015) |
| 04/28/2015 | 31 | BRIEF IN OPPOSITION by USA as to Terrence Byrd re 28 Unopposed MOTION to Suppress All Evidence Resulting From the Illegal Stop of Terrence Byrd's Vehicle Reply Brief due by 5/15/2015. (Behe, William) (Entered: 04/28/2015) |
| 05/27/2015 | 33 | ORDER as to Terrence Byrd. A Hearing on dft's mtn to suppress has been set for 6/16/2015 @ 10:30 AM in Harrisburg - Courtroom 3 before Honorable William W. Caldwell. Courtroom is subject to change.. Signed by Honorable William W. Caldwell on 05/27/15. (ma) (Entered: 05/27/2015) |

| Date Filed | # | Docket Text |
|---|---|---|
| 06/15/2015 | 34 | EXHIBIT(S) by Terrence Byrd re (Attachments: # 1 Exhibit(s), # 2 Exhibit(s), # 3 Exhibit(s), # 4 Exhibit(s), # 5 Exhibit(s), # 6 Exhibit(s), # 7 Exhibit(s), # 8 Exhibit(s), # 9 Exhibit(s), # 10 Exhibit(s))(Thornton, Thomas) (Entered: 06/15/2015) |
| 06/16/2015 | 36 | EXHIBIT LIST by USA, Terrence Byrd as to Terrence Byrd from suppression hearing held 6/16/15 (ma) (Entered: 06/16/2015) |
| 06/19/2015 | 37 | COURT REPORTER NOTES RE: Terrence Byrd filed by Wendy Yinger of Suppression Hearing before Judge Caldwell on 6/16/2015. In accordance with 28 U.S.C. Section 753(b), I certify that these original notes are a true and correct record of proceedings in the United States District Court for the Middle District of PA before Judge Caldwell on 6/16/2015. By s/ Wendy Yinger. (Court Reporter Notes are viewable by court staff only). (ctrep7) (Entered: 06/19/2015) |

| Date Filed | # | Docket Text |
|---|---|---|
| 06/24/2015 | 38 | ORDER: The Gvt shall file a supplemental brief, re MOTION to Suppress 28 within 15 days, and the Dft shall file a response no later than 15 days thereafter as to Terrence Byrd.. Signed by Honorable William W. Caldwell on 06/24/15. (ma) (Entered: 06/24/2015) |
| 06/25/2015 | 39 | Unopposed MOTION Notice of Intent to Rest Case by Terrence Byrd. (Attachments: # 1 Proposed Order)(Thornton, Thomas) (Entered: 06/25/2015) |
| 06/25/2015 | 40 | Motion to Take Testimony and Extend Briefing Period (Attachments: # 1 attachment, # 2 Proposed Order)(Behe, William) (Entered: 06/25/2015) |

| Date Filed | # | Docket Text |
|---|---|---|
| 06/26/2015 | 41 | ORDER granting the Gvt's mtn to take testimony and extend briefing period 40 as to Terrence Byrd: Continuation of hearing re. dft's mtn to suppress 28 is set for 7/8/2015 @ 10:30 AM in Harrisburg - Courtroom 1 before Honorable William W. Caldwell.. Signed by Honorable William W. Caldwell on 06/26/15. (ma) (Entered: 06/26/2015) |
| 06/29/2015 | 42 | ORDER granting dft's Unopposed MOTION Notice of Intent to Rest Case 39 as to Terrence Byrd.. Signed by Honorable William W. Caldwell on 06/29/15. (ma) (Entered: 06/29/2015) |

| Date Filed | # | Docket Text |
|---|---|---|
| 06/30/2015 | 43 | NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Suppression Hearing Proceedings as to Terrence Byrd held on 6/16/2015 before Judge Caldwell. Court Reporter Wendy Yinger, Telephone number 717-440-1535. Transcript may be viewed at the court public terminal or purchased through the Court Reporter before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 7/21/2015. Redacted Transcript Deadline set for 7/31/2015. Release of Transcript Restriction set for 9/28/2015. (ctrep7) (Entered: 06/30/2015) |

| Date Filed | # | Docket Text |
|---|---|---|
| 07/08/2015 | 46 | COURT REPORTER NOTES re Terrence Byrd filed by L. Shuey of Suppression Hearing before Judge Caldwell on 7/8/15. In accordance with 28 U.S.C. Section 753(b), I certify that these original notes are a true and correct record of proceedings in the United States District Court for the Middle District of PA before Judge Caldwell on 7/8/15. By s/ L. Shuey. (Court Reporter Notes are viewable by court staff only). (ctrep1, ) (Entered: 07/08/2015) |

| Date Filed | # | Docket Text |
|---|---|---|
| 07/08/2015 | 47 | NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Suppression Hearing Proceedings as to Terrence Byrd held on 7/8/15 before Judge Caldwell. Court Reporter L. Shuey, Telephone Number 717-215-1270. Transcript may be viewed at the court public terminal or purchased through the Court Reporter before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 7/29/2015. Redacted Transcript Deadline set for 8/10/2015. Release of Transcript Restriction set for 10/6/2015. (ctrep1, ) (Entered: 07/08/2015) |
| 07/22/2015 | 49 | MOTION for Extension of Time to File Response/Reply by USA as to Terrence Byrd. (Attachments: # 1 Proposed Order)(Behe, William) (Entered: 07/22/2015) |

| Date Filed | # | Docket Text |
|---|---|---|
| 07/24/2015 | 50 | ORDER granting gov't's motion for ext of time 49 to file supp'l brief in opp to deft's motion to suppress evidence until 7/31/15. (See order for complete details.) Signed by Honorable William W. Caldwell on 7/23/15. (ki) (Entered: 07/24/2015) |
| 07/28/2015 | 51 | SUPPLEMENT filed by USA re: Terrence Byrd to 31 Brief in Opposition. (pjr) (Entered: 08/06/2015) |
| 08/21/2015 | 54 | REPLY BRIEF by Terrence Byrd re 28 Unopposed MOTION to Suppress All Evidence Resulting From the Illegal Stop of Terrence Byrd's Vehicle (Attachments: # 1 Exhibit(s))(Thornton, Thomas) (Entered: 08/21/2015) |
| 08/26/2015 | 55 | MEMORANDUM re MOTION to Suppress 28 as to Terrence Byrd (Order to follow as separate docket entry). Signed by Honorable William W. Caldwell on 8/26/15. (ma) (Entered: 08/26/2015) |

| Date Filed | # | Docket Text |
|---|---|---|
| 08/26/2015 | 56 | ORDER: In accord with the Memorandum 55 filed this date; Dft's MOTION to Suppress All Evidence Resulting From the Illegal Stop 28 is Denied as to Terrence Byrd.. Signed by Honorable William W. Caldwell on 8/26/15. (ma) (Entered: 08/26/2015) |
| 09/09/2015 | 59 | Unopposed MOTION for Reconsideration Denial of Suppression by Terrence Byrd. (Thornton, Thomas) (Entered: 09/09/2015) |
| 09/22/2015 | 63 | Order 59 (Thornton, Thomas) (Entered: 09/22/2015) |
| 10/01/2015 | 67 | PLEA AGREEMENT as to Terrence Byrd (Behe, William) (Entered: 10/01/2015) |

| Date Filed | # | Docket Text |
|---|---|---|
| 02/24/2016 | 84 | JUDGMENT as to Terrence Byrd (1), Count(s) 1, 2, Imprisonment 120 months on Count-1 and 36 months on Count-2 to run concurrently. Supervised Release 3 years on Count-1 and 1 year on Count-2 to run concurrently. Fine of $800.00 on Count-1; Special Assessment of $100.00 on each of Counts 1 and 2.. Signed by Honorable William W. Caldwell on 2/24/16. (ma) (Entered: 02/24/2016) |
| 03/07/2016 | 86 | NOTICE OF APPEAL by Terrence Byrd re 84 Judgment, - The Clerk's Office hereby certifies the record and the docket sheet available through ECF to be the certified list in lieu of the record and/or the certified copy of the docket entries. (Ulrich, Frederick) (Entered: 03/07/2016) |

**General Docket**
**Third Circuit Court of Appeals**

**Court of Appeals** **Docketed:** 03/11/2016
**Docket #:** 16-1509 **Termed:** 02/10/2017
USA v. Terrence Byrd
**Appeal From:**
United States District Court for the Middle District of Pennsylvania
**Fee Status:** FPD appointed

UNITED STATES OF AMERICA

v.

TERRENCE BYRD,

Appellant,

| Date Filed | Docket Text |
|---|---|
| 03/11/2016 | CRIMINAL CASE DOCKETED. Notice filed by Terrence Byrd in District Court No. 1-14-cr-00321-001. (SB) |
| 06/15/2016 | ECF FILER: ELECTRONIC BRIEF on behalf of Appellant Terrence Byrd, filed. Certificate of Service dated 06/15/2016 by ECF, US mail, hand delivery. (FWU) |

| Date Filed | Docket Text |
|---|---|
| 06/15/2016 | ECF FILER: ELECTRONIC VOLUME I of JOINT APPENDIX on behalf of Appellant Terrence Byrd, filed. Certificate of Service dated 06/15/2016 by hand delivery, ECF, US mail. (FWU) |
| 06/15/2016 | ECF FILER: ELECTRONIC JOINT APPENDIX on behalf of Appellant Terrence Byrd, filed. Certificate of Service dated 06/15/2016 by US mail, ECF, hand delivery. (FWU) |
| 06/15/2016 | ECF FILER: Unopposed Motion filed by Appellant Terrence Byrd to Lodge Exhibits in Digital Format (Appendix Volume 3). Certificate of Service dated 06/15/2016. [Entry edited to reflect correct event]--[Edited 06/17/2016 by EMA] (FWU) |
| 06/20/2016 | HARD COPY RECEIVED from Appellant Terrence Byrd - Appendix. Copies: 4. Volumes: 3 (Volume I attached to Brief); Volume III submitted in digital format. (MS) |

| Date Filed | Docket Text |
|---|---|
| 07/13/2016 | EXHIBIT(S) on flash drive consisting of exhibits outlined in volume 3 of appendix on behalf of Appellant Terrence Byrd, filed. See Clerk Order dated 6/30/2016. Copies: 4. Location: Safe. SEND TO MERITS PANEL (GPK) |
| 09/19/2016 | ECF FILER: ELECTRONIC BRIEF on behalf of Appellee USA, filed. Certificate of Service dated 09/19/2016 by ECF, US mail. (SRC) |
| 10/03/2016 | ECF FILER: ELECTRONIC REPLY BRIEF on behalf of Appellant Terrence Byrd, filed. Certificate of Service dated 10/03/2016 by ECF, US mail, hand delivery. (FWU) |
| 12/06/2016 | COURT MINUTES OF ARGUED/SUBMITTED CASES. [16-2781, 16-1447, 16-1247, 14-4694, 15-2694, 15-4039, 16-1654, 16-1655, 16-1656, 14-4423, 16-1509, 16-3142] (TLG) |

| Date Filed | Docket Text |
|---|---|
| 12/06/2016 | SUBMITTED on Tuesday, December 6, 2016. Panel: FISHER, KRAUSE and *MELLOY, Circuit Judges.* (Honorable Michael J. Melloy, Senior Circuit Judge for the Eighth Circuit Court of Appeals, sitting by designation) (TLG) |
| 02/10/2017 | NOT PRECEDENTIAL OPINION Coram: FISHER*, KRAUSE and MELLOY**, Circuit Judges. Total Pages: 9. Judge: MELLOY Authoring. * Honorable D. Michael Fisher, United States Circuit Judge for the Third Circuit, assumed senior status on February 1, 2017. **Honorable Michael J. Melloy, Senior Circuit Judge, United States Court of Appeals for the Eighth Circuit, sitting by designation. (PDB) |
| 02/10/2017 | JUDGMENT, Affirmed. All of the above in accordance with the opinion of this Court. Costs shall not be taxed. (PDB) |
| 03/06/2017 | MANDATE ISSUED, filed. (PDB) |

| Date Filed | Docket Text |
|---|---|
| 05/17/2017 | NOTICE from U.S. Supreme Court. Petition for Writ of Certiorari filed by Terrence Byrd on 05/11/2017 and placed on the docket 05/16/17 as Supreme Court Case No. 16-1371. (CND) |

RENTAL AGREEMENT NUMBER 106479455

Customer Name : REED,LATHEAN
Drivers Lic Number : [redacted]
Methods of Payment : MASTER [redacted]

RESERVATION NUMBER 40625057-CR-5 SPACE NO. 513

Budget Car Bus : 4708 1906
Plate Number : NJ YJ8E08
Veh Description : GRY FORD FUSION FWD
Odometer Out : 3660 Mls
Fuel Gauge Reading: Full

Pickup Date/Time : SEP 17,2014 10:26 AM
Pickup Location : 30 ROUTE 46
WAYNE,NJ,07470,US

Return Date/Time : SEP 20,2014 09:00 PM
Return Location : 30 ROUTE 46
WAYNE,NJ,07470,US

Additional Fees May Apply If Changes Are Made To Your Return Date, Time And/Or Location.

YOUR ESTIMATED VEHICLE CHARGES

| RATE CHART | QTY | MEA | TIME AND MILEAGE | |
|---|---|---|---|---|
| HRLY : | 39.99 | | | |
| DLY : | 46.00 | HOUR | 46.00= | 184.00 |
| WKLY : | 275.00 | | | |
| MTHLY: | | | | |
| Mls : Unlimited | | | | |
| Agreed Upon Upgrade at | | 10.00/Day $ | | |
| Your Estimated Time & Mileage: | | | | 184.00 |
| EMERGENCY RECOVERY FEE | .60 /DY | | + | 2.40 |
| 6.05% Concession Recovery Fee | | | + | 11.31 |
| Estimated Subtotal Charges: | | | | 197.71 |
| Sales Tax 7.000% | | | + | 13.84 |
| MVA LICENSE RECAP $ 1.10 | | | + | 1.10 |
| AUTHORITY FEE 5.00 /DY | | | + | 20.00 |
| YOUR ESTIMATED TOTAL CHARGES $ | | | | 232.57 |

YOUR OPTIONAL PRODUCTS/SERVICES

| | | |
|---|---|---|
| Loss Damage Waiver | 27.99/Day | Declined |
| Personal Accident and Effects | 6.75/Day | Declined |
| Emergency Sickness Plan | 5.00/Day | Declined |
| Supplemental Liability Insurance | 15.75/Day | Declined |

By my initials I accept or decline optional services/products as shown above. I [redacted]

Please return the vehicle with the same fuel level as you received it. If you do not, additional fuel fees may apply:000-074 Mls equals a 38.99 flat rate fee. 075 Mls and above equals .4277 per Ml or 9.410 per Gal . I [redacted]

NOTICE SUNSET NOTICE SUNSET NOTICE SUNSET NOTICE

Loss Damage Waiver is optional. An added daily cost of 27.99 covers your responsibility for damage to our car. Check with your insurer as this may be duplicative of your own car insurance. I agree the charges listed above are estimates and that I have reviewed/agreed to all rate/conditions here are in the rental jacket.No additional drivers allowed without prior written consent. Tickets, fines and admin fees to be charged to this rental. I [redacted]

If you have questions regarding this rental, call us at 973-785-0300 This vehicle was rented to you by BUDGET

ADDENDUM TO RENTAL AGREEMENT

In connection with my ( I ) Rental Application ( ) Additional Driver's Application to Budget Rent a Car System, INC. ("Budget"), I certify that:

- I have a currently valid drivers license, not suspended, revoked, expired, cancelled, surrendered or improperly altered.
- I have not had 3 or more convictions for moving violations within the past 24 months (including seat belt violations).
- I have not been convicted of DWI/SUI/DUAI within the past 36 months.
- I have not been convicted of leaving the scene of an accident (hit and run) or failure to report an accident within the past 36 months.
- I have never been convicted of obtaining a vehicle unlawfully, possessing a stolen vehicle, or using a vehicle in a crime or in connection with an unlawful act.
- I have not been convicted of reckless driving within the past 36 months.
- I have not had 3 or more accidents within the past 36 months.

I understand that Budget regards the facts to which I am certifying as material to its decision to rent or permit me to drive its vehicle, and is relying on the accuracy and truthfulness of this certification. I further understand and agree that if I provide false or misleading information, my use of the vehicle is prohibited and unauthorized. This may result in any and all coverage otherwise provided by the Rental Agreement being void and my being fully responsible for all loss or damage, including liability to third parties.

I authorize Budget, in the event of an accident involving a Budget vehicle, to verify my driving record with any appropriate authority, either now or in the future, and I authorize any government motor vehicle department to release my records at the request of Budget or its designee.

I understand that the only ones permitted to drive the vehicle other than the renter are the renter's spouse, the renter's co-employee (with the renter's permission, when company business), or a person who appears at the time of the rental and signs an Additional Driver Form. These additional drivers must also be at least 25 years old and validly licensed.

PERMITTING AN UNAUTHORIZED DRIVER TO OPERATE THE VEHICLE IS A VIOLATION OF THE RENTAL AGREEMENT. THIS MAY RESULT IN ANY AND ALL COVERAGE OTHERWISE PROVIDED BY THE RENTAL AGREEMENT BEING VOID AND MY BEING FULLY RESPONSIBLE FOR ALL LOSS OR DAMAGE, INCLUDING LIABILITY TO THIRD PARTIES.

I understand that this document becomes an addendum to the Rental Agreement listed below.

Renter: I _____

Additional Driver: I _____

Date: [illegible] _____

(FOR OFFICE USE ONLY)

Additional Driver's License State & Number: I _____

Rental Agreement Number: 100679855 _____

**Transcription of Graphics on JA 18-19**

RENTAL AGREEMENT NUMBER 180679855
Customer Name: REED, LATASHA
Drivers Lic Number: USMJXXXXXXXX9722
Methods of Payment: MASTER XX8443

RESERVATION NUMBER 48825057-05-5
SPACE NO. E13
Budget Car Num: 6 7 0 8 1 2 0 6
Plate Number: NJ Y1BE6B
Veh Description: GRY FORD FUSION FWD
Odometer Out: 7668 MIs
Fuel Gauge Reading: Full

Pickup Date/Time: SEP 17,2014@10:26 AM
Pickup Location: 50 Route 46
WAYNE,NJ,07470,US

Return Date/Time: SEP 20,2014@04:00 PM
Return Location: 50 Route 46
WAYNE,NJ,07470,US

Additional Fees May Apply If Changes Are Made To Your Return Date, Time And/Or Location.

YOUR ESTIMATED VEHICLE CHARGES

| MIN | 1 DAY | MAX | DAY |
|---|---|---|---|
| | RATE CHART | TIME AND MILEAGE | |
| HRLY: | 34.50 | | |
| DLY: | 46.00 | 4DY@ 46.00= | 184.00 |
| WKLY: | 275.00 | | |
| MTHLY: | | | |
| MIs: | Unlimited | | |

| | | |
|---|---|---|
| Agreed Upon Upgrade at 10.00/Day X____ | | |
| Your Estimated Time & Mileage: | | 184.00 |
| ENERGY RECOVERY FEE .60/DY | + | 2.40 |
| 6.00% Concession Recovery Fees | + | 11.31 |
| Estimated Subtotal Charges: | | 197.71 |
| Sales Tax 7.000% | + | 13.84 |
| VEH LICENSE RECOUP % 1.10 | + | 2.02 |
| SECURITY FEE 5.00 /DY | + | 20.00 |
| YOUR ESTIMATED TOTAL CHARGES X___\|s\|___ | | 233.57 |

YOUR OPTIONAL PRODUCTS/SERVICES

| | | |
|---|---|---|
| Loss Damage Waiver | 27.99/Day | Declined |
| Personal Accident and Effects | 6.95/Day | Declined |
| Emergency Sickness Plan | 5.00/Day | Declined |
| Supplemental Liability Insurance | 15.75/Day | Declined |

By my initials I accept or decline optional services/products as shown above. X___\|s\|____

Please return the vehicle with the same fuel level as you received it. If you do not, additional fuel fees may apply: 000-074 MIs equals a 13.99 flat rate fee. 075 MIs and above equals .4277 per MI or 9.410 per Gal. X___\|s\|____

---------NOTICES---------BUDGET---------NOTICES----

Loss Damage Waiver is optional. An added daily cost of 27.99 covers your responsibility for damage to our car. Check with your insurer as this may be duplicative of your own car insurance. I agree the charges listed above are estimates and that I have

reviewed/agreed to all notices/terms here and in the rental jacket. No additional drivers allowed without prior written consent. Tickets, fines and admin fees to be charged to this rental. X___\s____

If you have questions regarding this rental, call us at 973-785-2332

This vehicle was rented to you by SACHAN

ADDENDUM TO RENTAL AGREEMENT

In connection with my {X} Rental Application { } Additional Driver's Application to Budget Rent a Car System, INC. ("Budget"), I certify that:

* I have a currently valid driver's license, not suspended, revoked, expired, cancelled, surrendered or improperly altered.
* I have not had 3 or more convictions for moving violations within the past 24 months (including seat belt violations).
* I have not been convicted of DWI/DUI/DWAI within the past 36 months.
* I have not been convicted of leaving the scene of an accident (hit and run) or failure to report an accident within the past 36 months.
* I have never been convicted of obtaining a vehicle unlawfully, possessing a stolen vehicle, or using a vehicle in a crime or in connection with an unlawful act.
* I have not been convicted of reckless driving within the past 36 months.
* I have not had 3 or more accidents within the past 36 months.

I understand that Budget regards the facts to which I am certifying as material in its decision to rent or permit me to drive its vehicle, and is relying on the accuracy and truthfulness of this certification. I further understand and agree that if I provide false or misleading information, my use of the vehicle is prohibited and unauthorized. This may result in any and all coverage otherwise provided by the Rental

Agreement being void and my being fully responsible for all loss or damage, including liability to third parties.

I authorize Budget, in the event of an accident involving a Budget vehicle, to verify my driving record with any appropriate authority, either now or in the future, and I authorize any government motor vehicle department to release my records at the request or Budget or its designee.

I understand that the only ones permitted to drive the vehicle other than the renter are the renter's spouse, the renter's coemployee (with the renter's permission, while on company business), or a person who appears at the time of the rental and signs an Additional Driver Form. These other drivers must also be at least 25 years old and validly licensed.

PERMITTING AN UNAUTHORIZED DRIVER TO OPERATE THE VEHICLE IS A VIOLATION OF THE RENTAL AGREEMENT. THIS MAY RESULT IN ANY AND ALL COVERAGE OTHERWISE PROVIDED BY THE RENTAL AGREEMENT BEING VOID AND MY BEING FULLY RESPONSIBLE FOR ALL LOSS OR DAMAGE, INCLUDING LIABILITY TO THIRD PARTIES.

I understand that this document becomes an addendum to the Rental Agreement listed below.

Renter: X\s\
Additional Driver: X_____
Date: 17SEP14 _____

(FOR OFFICE USE ONLY)
Additional Driver's License State & Number: X_____

Rental Agreement Number: 180679856_____

HBG221-00165618 NCICB 20140917 19:49:00
20140917 19:49:00 047D00B042
3L01047D00B0422QH
PAPSP3600
THIS NCIC INTERSTATE IDENTIFICATION INDEX MULTIPLE RESPONSE IS THE RESULT OF YOUR INQUIRY ON NAM/BYRD,TERRENCE SEX/M RAC/B DOB/19770719
PUR/C
ATN/TROOPER ERDMAN

| NAME | FBI NO. | INQUIRY DATE |
|---|---|---|
| CARTER,JAMES | 748535EB2 | 2014/09/17 |

| SEX | RACE | BIRTH DATE | HEIGHT | WEIGHT | EYES |
|---|---|---|---|---|---|
| M | B | 1972/07/19 | 600 | 175 | BRO |

HAIR PHOTO
BRO Y

BIRTH PLACE
NEW YORK

FINGERPRINT CLASS PATTERN CLASS
PM PI 15 PO 18
07 PO PO 21 12

ALIAS NAMES
BYRD,TERRENCE T BYRD,TERRANCE
BYRD,TERRENCE

OTHER SCARS-MARKS-

| BIRTH DATES TATTOOS | SOCIAL SECURITY |
|---|---|
| 1977/07/19 TAT UR ARM | [REDACTED] |
| 1977/05/27 TAT L SHLD | [REDACTED] |

TAT UL ARM
TAT L ARM
TAT R ARM
TAT R SHLD

IDENTIFICATION DATA UPDATED 2014/07/23

THE CRIMINAL HISTORY RECORD IS MAINTAINED AND AVAILABLE FROM THE FOLLOWING:
NEW JERSEY - STATE ID/NJ279332C
FBI - FBI/748535EB2

END - 1ST NCIC III RECORD OF MULTIPLE RESPONSE

| NAME | FBI NO. | INQUIRY DATE |
|---|---|---|
| FARMER,TERRANCE LAMONT | 272J13WA8 | 2014/09/17 |

| SEX | RACE | BIRTH DATE | HEIGHT | WEIGHT | EYES |
|---|---|---|---|---|---|
| M | B | 1977/04/07 | 511 | 190 | BRO |

| HAIR | PHOTO |
|---|---|
| BLK | Y |

BIRTH PLACE

HBG221-00165622 NLETS 20140917 19:49:49
20140917 19:49:48 047D00B043
CR.NJIII0000
16:49 22925
09/17/2014 36752 PAPSP3600
*0B0432QR

TXT

HDR/2L01047D00B0432QR
ATN/TROOPER ERDMAN;N

THIS RECORD IS BASED ON THE SID NUMBER IN YOUR REQUEST-SID/NJ279332C
NEW JERSEY CRIMINAL HISTORY DETAILED RECORD
USE OF THIS RECORD IS GOVERNED BY FEDERAL AND STATE REGULATIONS. UNLESS FINGERPRINTS ACCOMPANIED YOUR INQUIRY, THE STATE BUREAU OF IDENTIFICATION CANNOT GUARANTEE THIS RECORD RELATES TO THE PERSON WHO IS

THE SUBJECT OF YOUR REQUEST. USE OF THIS RECORD SHALL BE LIMITED SOLELY TO

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STATE ID NO. 279332C FBI NO. 748535EB2 DATE REQUESTED. 09/17/2014

NAME: CARTER, JAMES

SEX RACE BIRTH DATE HEIGHT WEIGHT EYES
M B 07/19/1972 600 175 BRO
HAIR BIRTH PLACE
BRO NY

RECEIVING AGENCY: PAPSP3600 U.S. CITIZEN: YES
FPC: WWWWW// AFIS NO: III: MULTI STATE
DNA SAMPLE STATUS:
PROFILE IN CODIS

ALIAS NAMES/OTHER BIRTH DATES
BYRD, TERRANCE 07/19/1972
BYRD, TERRENCE 07/19/1972
BYRD, TERRENCE 05/27/1977
BYRD, TERRENCE 07/19/1977
BYRD, TERRENCE T. 07/19/1972
BYRD, TERRENCE T. 07/19/1977
SOCIAL SECURITY NUMBERS
[REDACTED] [REDACTED] [REDACTED]
SCARS/MARKS/TATTOOS/MISC NUMBERS
TATTOO LEFT ARM CHINESE WRITING
TATTOO LEFT ARM FULL SLEEVE
TATTOO LEFT SHOULDER CHINESE WRITING

HBG221-00165621 NLETS 20140917 19:49:47
20140917 19:49:47 047D00B043
CR.WVFBINF00
16:49 57509
09/17/2014 36749 PAPSP3600
*0B0432QR
TXT
HDR/2L01047D00B0432QR
ATN/TROOPER ERDMAN
********** CRIMINAL HISTORY RECORD*******

**********Introduction **********

This rap sheet was produced in response to the following request:

Purpose Code C
Attention TROOPER ERDMAN

The information in this rap sheet is subject to the following caveats:

(US)
(US)
(US)
**********IDENTIFICATION **********

Subject Name(s)

CARTER, JAMES
BYRD, TERRANCE (AKA)
BYRD, TERRENCE (AKA)
BYRD, TERRENCE T (AKA)

Subject Description

| FBI Number | State Id Number |
|---|---|
| 748535EB2 | NJ279332C |

Social Security Number
[REDACTED]

| Sex | Race |
|---|---|
| Male | Black |

| Height | Weight | Date of Birth |
|---|---|---|
| 6'00" | 175 | 1972-07-19 |
| | | 1977-05-27 |
| | | 1977-07-19 |

| Hair Color | Eye Color |
|---|---|
| Brown | Brown |

Scars, Marks, and Tattoos

| Code | Description, Comments, and Images |
|---|---|
| TAT R ARM | , TATTOO ON RIGHT ARM |
| TAT L SHLD | , TATTOO ON LEFT SHOULDER |
| TAT R SHLD | , TATTOO ON RIGHT SHOULDER |
| TAT UL ARM | , TATTOO ON UPPER LEFT ARM |
| TAT UR ARM | , TATTOO ON UPPER RIGHT ARM |
| TAT L ARM | , TATTOO ON LEFT ARM |

| Place of Birth | Citizenship |
|---|---|
| New York | United States |

Caution Information

| Caution | WANTED - CONFIRM THAT WANT IS STILL OUTSTANDING. AGENCY- |
|---|---|

SHERIFF'S OFFICE BRIDGETON (NJ0060000) NIC-W431447940WANTED-NCIC #W431447940 BYRD,TERRANCE PROB VIOLATION - SEE MIS (IDENTIFY ORIGINAL OFFENSE) CASE #0714-206 DATE OF WARRANT 0C/23/2014 NOTIFY NJ0060000 SHERIFF'S OFFICE BRIDGETON NJ CAUTION-QUERY NCIC FOR REASON OF CAUTION AND POSSIBLE CROSS REFERENCE INFORMATION

**********CRIMINAL HISTORY **********

********** INDEX OF AGENCIES **********

Agency SHERIFF'S OFFICE; NJ0060000;

* * * END OF RECORD * * *

COMMONWEALTH OF
PENNSYLVANIA

VS. DISTRICT NO. 12-3-03

TERRENCE TILLMAN
BYRD

TRANSCRIPT OF PROCEEDINGS
PRELIMINARY HEARING

BEFORE: WILLIAM WENNER,
DISTRICT JUDGE

DATE: OCTOBER 9, 2014, 3:55 P.M.

PLACE: 5925 STEVENSON AVENUE,
SUITE B
HARRISBURG, PENNSYLVANIA

APPEARANCES:

OFFICE OF THE DISTRICT ATTORNEY
BY: JOSEPH CARDINALE, ESQUIRE

FOR – COMMONWEALTH

PERRY SHORE WEISENBERGER & ZEMLOCK
BY: CASEY G. SHORE, ESQUIRE

FOR – DEFENDANT

LISA BRUAW, REPORTER
NOTARY PUBLIC

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WITNESS


| FOR COMMON-WEALTH | DIRECT | CROSS | RE-DIRECT | RE-CROSS |
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[3]

THE COURT: Do you need me to read the criminal complaint?

MR. SHORE: No, waive reading, Judge.

THE COURT: Commonwealth ready to proceed?

MR. CARDINALE: We are, Your Honor.

THE COURT: Call your first witness, please.

MR. CARDINALE: Commonwealth calls Trooper David Long.

DAVID LONG, called as a witness, being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. CARDINALE:

Q Good morning, Trooper Long. How are you currently employed?

A The Pennsylvania State Police.

Q How long have you worked there?

A Eight years.

Q Were you working there in your capacity as a trooper on September 17th, 2014?

A I was.

[4]

Q What were your duties that day?

A I'm currently assigned to the Bureau of Criminal Investigation Shield Unit. I was performing patrol duties on Interstate 81.

Q And around 6:20 that day what were you doing?

A I was sitting in the center median in Dauphin County approximately Mile Marker 76 observing southbound traffic.

Q Did you notice anything suspicious?

A I observed a gray in color Ford Fusion pass my travels. I observed his hands at 10 and 2. And the operator was sitting behind the B pillar is what we would call hiding behind the B pillar.

Q And how did you pursue that vehicle?

A At that time I pulled from my stationary position. I continued to follow the vehicle southbound. The vehicle was approximately four or five vehicles traveling in the left lane in front of me. And he was behind a truck tractor at that time.

We approached Mile Marker 74.3, I believe, or let me back up. Approximately Mile Marker 75 the truck tractor moved from the left lane to the right lane. The silver Ford Fusion [5] with the

New Jersey registration continued in the left lane and continued in the left lane until Mile Marker 73.4.

At that time I caught up to the vehicle and initiated a traffic stop by activating my lights. I'm in an unmarked vehicle.

Q And you stopped the vehicle?

A Yes, on the right shoulder.

Q Did you have occasion to make contact with the operator of the vehicle?

A At that time I called out the stop to our dispatch. I approached the vehicle on the passenger side, explained the reason for the stop to the operator. The operator was visibly nervous. He was shaking and had a hard time obtaining his driver's license.

He actually did not have a driver's license. He had a piece of paper with New York identification on it. He said that he had washed his driver's license. I asked the operator of the vehicle if it was his. He stated, no, it was a rental vehicle. At that time I asked for the rental agreement.

At the time of day there was direct sunlight shining in at us which would have been [6] southbound traffic. At that time I asked the operator if we could move the traffic stop further up to Mile Marker 72 for his safety and my safety, so we moved the traffic stop up.

Q And you moved the traffic stop up. How did you proceed from there?

A I was preparing a written warning for the car. Trooper Martin arrived at that time. He backed me up on the traffic stop. As he did, I was running the operator's license, criminal history, and I noticed that the operator was not the rental agreement holder.

As I was running the criminal history the operator's name given by the New York piece of paper displayed Terrence Byrd, but when I ran the name and date of birth it came back as a James Carter, I believe it was. Yes, James Carter. There was a current warrant for probation violations out of New Jersey and that kind of delayed the process.

Trooper Martin had further conversation with Mr. Byrd as I went back and was trying to figure out and positively identify Mr. Byrd and the James Carter and check on the status of the warrant.

[7]

Q When you determined that there was an outstanding warrant how did you proceed from there?

A At that time through communications they determined that the warrant was valid and Mr. Byrd was actually Mr. Carter. Mr. Carter was Mr. Byrd. I had him step from the vehicle. New Jersey stated it was a probation violation or parole violation, one or the other, and that they did not or wouldn't extradite. It was in-state only.

So I had Mr. Byrd step to the rear of the vehicle and I went over everything with him. First I explained the communication between New Jersey and I explained the lengthy process that it took to identify him.

I noticed as I was speaking with Mr. Byrd he became or he continued to be uncomfortable and his level of nervousness began to rise. He was rocking back and forth and he would not make direct eye contact.

Q Did you ask him any questions?

A Just I asked him generally investigative questions where he was going, where he was coming from. I asked him if he rented the vehicle. He wasn't the renter of the vehicle. And based on the indicators that I had with his [8] nervousness and his actions, I asked him if there is anything illegal in the car.

At that point he looked at me and just smiled. He hesitated and said, no, there's nothing illegal in the car. I asked for consent to search the vehicle and he said at that point that he had smoked a blunt in the car earlier; that he would get it for us.

And I told him, no, we would obtain it, get the blunt out of the car. And he was back and forth whether or not he wanted us to search the car. But he did give us consent to search the car.

At that time there's only Trooper Martin and myself was there. I approached the driver's side and started to conduct my search. Mr. Byrd was on

the right shoulder. And Trooper Martin was standing at the rear of the vehicle on the right side of the vehicle, passenger side, more towards the rear but towards the center B pillar.

Mr. Byrd's hands were in and out of his pocket. He was moving back and forth. Trooper Martin stated to me that Mr. Byrd is acting—his behavior is not consistent; that there possibly could be something more in the vehicle.

Mr. Byrd said that he did snort [9] cocaine at one point in the vehicle. And at that point Trooper Martin told me to open the trunk. I opened the trunk and Trooper Martin was standing at the back of the trunk.

Trooper Martin said to me that I'm going to detain Mr. Byrd at this point. I said okay. So I was getting up. Trooper Martin just put his hands on handcuffs and said, Mr. Byrd, you're not under arrest. Mr. Byrd smiled and took off running towards the wood line.

Off duty Trooper Swope had showed up at some point during the traffic stop. I did not see him show up. And a foot pursuit ensued. Approximately 300 yards, 400 yards from the vehicles Mr. Byrd was taken into custody by Trooper Swope and Trooper Martin.

I returned to the vehicle. Mr. Byrd stated out there that there was heroin in the vehicle. And we went back and searched the vehicle, located body armor and 49 bricks of heroin.

Q And did you field-test the suspected heroin?

A Yes. When we got back to PSP Harrisburg it was field-tested.

[10]

Q And what were the results?

A Tested positive for heroin.

Q How long did you say you chased down Mr. Byrd?

A I was the last guy. I'm running 300 yards maybe a little more. It was over two fences.

MR. CARDINALE: Nothing further, Your Honor.

CROSS EXAMINATION

BY MR. SHORE:

Q Trooper, you said that you saw when the car passed you you witnessed Mr. Byrd driving the vehicle and he was did you say hiding behind the B pillar?

A It's when the operator sits behind so when you look straight through the vehicle you didn't see any occupants. It's straight back and his arms were locked out.

Q But nothing illegal about that?

A Nothing illegal.

Q About 6:20 in the evening. What day of the week was this?

A Wednesday, I believe.

[11]

Q So under normal conditions that's pretty heavy traffic that stretch of 81. Would you agree with me?

A Absolutely.

Q And it was your testimony that whenever—did you specifically pull out to follow Mr. Byrd because of him leaning back?

A That's what caught my attention. I did not pull from my position to pull him over. That's not a violation, but that's one of the first things that got my eye to it.

Q But did you pull out to follow his vehicle?

A Yes.

Q And I believe it was your testimony that whenever you pulled out he was one of four or five cars in the left-hand lane?

A Correct. He was directly behind a truck.

Q And that's not only a fairly congested area of 81, but a lot of tractor-trailers are in that neck of the highway?

A Right.

Q And at that specific time were there a number of tractor-trailers traveling on 81?

[12]

A I would say, yes.

Q So the traffic was backed up. It wasn't a smooth flowing traffic pattern. Would you agree with me on that?

A There was a cluster of traffic is how I would say it.

Q And I apologize. I didn't pay specific attention to the mile markers that you were noting. But after the tractor-trailer in front of Mr. Byrd pulls over to the right-hand lane does he have a clear path? What happened to the other vehicles that were also in front of him?

A Yes. He was the lead vehicle in the left lane for approximately half a mile.

Q Had he passed all of the cars in the right-hand lane; in other words, did he have an opportunity to pull over in the right-hand lane?

A Yes. After the tractor-trailer moved from the left to right then the right lane was open. So after

he passed the tractor-trailer that's when he could immediately have went to the right lane.

Q Driving the speed limit? Were there any issues with speed?

A No.

[13]

Q Was that vehicle that he is driving holding up a lane of traffic in the left lane?

A Yes. It took me approximately a half mile to catch up to him to initiate the traffic stop. The three or four cars that were in front of me between my car and his car had to move to the right lane so I could initiate the traffic stop.

Q You said it was about half a mile and you pull him over?

A Yes.

Q Now, after you have him out of the vehicle at what point in time did you ask him to step from the vehicle?

A After I completed my checks and had the written warning prepared.

Q So your intention was just to get him back to the back of the car, I'm assuming?

A Yes.

Q And issue him a traffic citation for driving in the left lane?

A A warning.

Q And that's when the interaction kind of escalated, so to speak?

A Sure.

Q Was there ever any point in time when [14] you told him he was free to leave?

A No.

Q And, basically, the conversation continues because of the things that you noted in terms of his nervousness, not making eye contact, whatever other factors you had mentioned as you continued to question him?

A Yes.

Q Now, this is as a result of the training that you indicated you received in interdiction and things of that nature?

A Yes. I issued the warning and gave him back his documents. And that's when I followed up with questioning.

Q But never told him he was free to leave?

A No. That part of the traffic stop was done. The written warning part was done and I moved on to additional questions.

Q At any point in time did you indicate to him you believed there may be narcotics inside the car or anything like that?

A Yes.

Q Was that before or after he admitted to you that he had smoked marijuana.

[15]

A I'm not 100 percent sure. I want to say before, but I'm not 100 percent on that.

Q And whenever Trooper Martin—I believe it was your testimony and I certainly don't want you to testify for Trooper Martin—but I think it was your investigation at that point in time he also began to feel that Mr. Byrd was acting a bit too nervously and wanted to handcuff him?

A More than the general public, yes.

Q And I'm assuming that was for officer safety purposes?

A Detained not arrested, yes.

Q And Trooper Martin specifically told him that he was not under arrest?

A Correct.

Q And that's when Mr. Byrd runs off?

A He smiled and ran.

Q Now, whenever it comes time where you guys are talking about any drugs that might exist inside the vehicle or Mr. Byrd's personal use of any drugs, you had said that you had a discussion about consent to search?

A Correct.

Q And I believe it was your terminology that you said he kind of went back and forth in [16] order to give you consent to search the vehicle?

A He said yes and then he said that he would get it and then he asked why we wanted to search and he did say that. He did give consent to search the car.

Q At any point in time did you tell him that he did not have to consent to a search of the vehicle?

A I can't honestly answer that. I don't know.

Q And within the criminal investigation division of the state police do you guys have any written consent forms for people to fill out?

A Yes.

Q Did you have any with you that day?

A Yes.

Q Did you have him complete that?

A I'm not 100 percent. I want to say no.

Q And, incidentally, do you have any type of video that you were using?

A Yes.

Q And was it activated?

A Yes. It's downloaded.

Q So it will be available for discovery?

[17]

A Yes.

Q Do you ever find anything?

A No.

Q And did you ever ask that guy seems a little wishy-washy on consent, maybe I should walk him through a more formal form, make sure he understands what he is doing?

A I may have actually explained to him that I didn't need his consent because he's an unauthorized driver of the vehicle. I may have explained to him I don't need his consent.

Q There weren't any efforts to contact the rental company or the person that was on the rental agreement?

A I'm not required to because it says no other driver permitted and it was a current contract.

Q I'm assuming, too, everything in order prior to the time that you were going to issue him a warning card and that's when you had established everything in terms of his identity, the warrant from New Jersey, all of that stuff had already been sort of ferreted out?

A Yes. And I explained to him the delay for the stop. It was a lengthy stop and part of [18] that was because of the identification purposes and the warrant.

MR. SHORE: Thank you. I have no further questions, Judge.

REDIRECT EXAMINATION

BY MR. CARDINALE:

Q When you were following Mr. Byrd, about how many miles was he traveling in the left lane that you noticed?

A Approximately 3 miles.

Q And did he overtake any cars while in that lane?

A When he was behind the truck there were vehicles in the right lane being overtaken, yes.

MR. CARDINALE: Nothing further, Your Honor.

RECROSS EXAMINATION

BY MR. SHORE:

Q Just so I make sure I understand, even though he may have been in that left-hand lane for [19] a three-mile stretch that you witnessed, part of that three miles was a part of time when the tractor-trailer was in front of him?

A Yes.

MR. SHORE: No further questions.

THE COURT: Any defense testimony?

MR. SHORE: No witnesses or evidence, just brief argument.

(Mr. Shore closed on behalf of the Defendant.)

(Mr. Cardinale closed on behalf of the Commonwealth.)

THE COURT: I'm going to hold both charges for court. Bail will remain the same on Mr. Byrd.

(The proceedings concluded at 4:17 p.m.)

CERTIFICATE

I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me of the within proceedings and that this is a correct transcript of the same.

_____

Lisa Bruaw, Reporter
Notary Public

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF
PENNSYLVANIA
HARRISBURG DIVISION

| | |
|---|---|
| UNITED STATES OF AMERICA | CASE NO. |
| v. | |
| TERRENCE BYRD | 1:14-CR-00321 |

TRANSCRIPT OF PROCEEDINGS
SUPPRESSION HEARING

Held before the
HONORABLE WILLIAM W. CALDWELL
June 16, 2015, commencing at 10:45 a.m.
Courtroom No. 3, Federal Building,
Harrisburg, Pennsylvania

APPEARANCES:

WILLIAM A. BEHE, ESQUIRE
United States Attorney's Office
228 Walnut Street, Suite 220
Harrisburg, PA 17108
For the United States

THOMAS A. THORNTON, ESQUIRE
Federal Public Defender
100 Chestnut Street, Suite 306
Harrisburg, PA 17101-2540
For the Defendant

Proceedings recorded by machine shorthand; transcript produced by computer aided transcription.

Wendy C. Yinger, RMR, CRR
Official Court Reporter
wendy_yinger@pamd.uscourts.gov

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[3]

MR. BEHE: Your Honor, this is the time and place set by the Court for a hearing on the Defendant's motion to suppress evidence in the matter of the United States of America versus Terrence Byrd, which is at this court's criminal docket number 14-321. The record should reflect Mr. Byrd is present in court with counsel, Mr. Thornton. We are prepared to proceed.

Initially though, the United States would like to raise with the Court the question of whether or not the Defendant is entitled to challenge the search of the vehicle in question. It is uncontested that when Mr. Byrd was stopped in his vehicle in September of last year, that he was driving a rental car. He was the only one in the car. He did not rent the car. The car was rented by somebody else. The rental agreement says that only the person who rents it, or a limited number of individuals, are permitted to operate that car.

And the United States Court of Appeals for the Third Circuit in United States versus Kennedy, which is at 638 Fed.3d 159, decided in 2011, concluded as follows: That the driver of a rental car whose name is not listed on the rental agreement generally lacks a legitimate expectation of privacy in the car. And the Court concluded that they join, along with a number of other circuits, in concluding that a lack of cognizable property interest in the rental vehicle and the accompanying right to exclude makes it unreasonable for an unauthorized [4] driver to expect privacy in the vehicle. We conclude that society

generally does not share or recognize an expectation of privacy for those who have gained possession and control over a rental vehicle they have borrowed without the permission of the rental company.

And similarly in United States versus Mebrtatu, M-E-B-R-T-A-T-U, which was a case submitted to the Third Circuit, there was a holding following Kennedy, and concluding that the driver of a rental car who has been lent the car by the renter, but was not listed on the rental agreement as an authorized driver, lacks a legitimate expectation of privacy in the car unless there exists extraordinary circumstances.

And in this case, there are no circumstances. The rental agreement, which we will now admit by stipulation as Government's Exhibit No. 1, shows the vehicle was rented by a Latasha Reed. She is the only one who signed the agreement. The agreement specifically states that, I understand that the only ones permitted to drive the vehicle other than the renter are the renter's spouse, co-employee, or person who appears at the time of the rental and signs an additional driver's fare. Driver must be at least 25 years of age. And warning, in capital letters, that unauthorized drivers of the vehicle may cause a violation of the rental agreement. The only one that signed it is Ms. Reed.

Based on those facts, we submit that the Defendant [5] has no expectation of privacy to challenge the search of this rental car that he did not rent, did not sign the agreement, and was the only one

in the car. The person that rented it wasn't even there.

THE COURT: Mr. Thornton.

MR. THORNTON: Yes, Your Honor, I'd like to respond to that, but if you could just give me one minute to go out in the hallway? Mr. Byrd's family is down at the metal detector. They didn't let them up. If I could just tell the marshal in the hallway to let the family up, if you give me one second?

THE COURT: All right, sure.

(Complied.)

THE COURT: This matter that you've raised, Mr. Behe, was it raised prior to this hearing?

MR. BEHE: No, Your Honor. When we were researching and preparing for the hearing, we were looking at the documents and realized that he had not signed the rental agreement.

THE COURT: Okay. Very well. This is not something I can rule on, I don't think, in court right now. I probably have to handle it with the rest of the proceeding. That would be dispositive of the whole thing?

MR. BEHE: It would.

THE COURT: Well, I wish I had an opportunity to consider this before this moment.

MR. THORNTON: Your Honor, to that end, we also did [6] not—we received this information this morning. We have a defense—I don't know if defense is the right word—but the rental agreement itself says specifically that the—Your Honor, I was just going to bring up what has been marked as Government's Exhibit No. 1, I believe.

MR. BEHE: I already gave the Court.

MR. THORNTON: Oh, the Court has it? Okay, I'm sorry. Your Honor, in the paragraph that Mr. Behe read, it indicated the only ones permitted to drive the vehicle other than the renter are the renter's spouse. This vehicle was rented by Mr. Byrd's spouse, Your Honor. She is a common law spouse, but they have five children together and they've been together for 25 years. She rented this vehicle —

THE DEFENDANT: 17 years.

MR. THORNTON: 17 years, I'm sorry. She rented this vehicle, and she was actually using his car while he was using her car to make the trip to Pittsburgh.

THE COURT: Okay. Well, this is something that I'm going to have to decide in disposing of the case.

MR. THORNTON: Right. We don't have her here because we weren't aware this would be an issue. So if Your Honor wanted to continue this hearing, we can bring her in for a continuation of this, and then we can settle this issue.

THE COURT: Well, maybe you and Mr. Behe can stipulate about this. But if you can't, we can bring her in [7] later. I don't think I want to just continue the hearing at this late stage.

MR. THORNTON: I don't know if Mr. Behe is willing to stipulate. I think you want her here?

MR. BEHE: I would seeing as how somebody other than his common law wife showed up at the bail hearing to be a third party custodian. He told the police he was going to see his girlfriend in Pittsburgh. I can't stipulate.

THE COURT: I can't get into that right now. That could be maybe part of the briefing. All right.

MR. THORNTON: Your Honor, then we have filed a motion to suppress, and it's the Government's burden, I believe.

MR. BEHE: Yes. We call Trooper Long.

**DAVID LONG, GOVERNMENT'S WITNESS, SWORN**

COURTROOM DEPUTY: Would you state your name, please?

THE WITNESS: Trooper David Long.

COURTROOM DEPUTY: Thank you.

**DIRECT EXAMINATION**

BY MR. BEHE:

Q. Good morning.

A. Good morning.

Q. Would you tell us, please, by whom you're employed?

A. Pennsylvania State Police.

Q. How long have you been with the Pennsylvania State Police?

[8]

A. Nine years.

Q. And what role do you play with the state police? What is your job?

A. Currently assigned to the Bureau of Criminal Investigation, Shield Unit.

MR. THORNTON: I'm sorry, Your Honor. The Court security officers—oh, okay. They let the family up. I wasn't sure. I'm sorry.

BY MR. BEHE:

Q. Could you again repeat what your current assignment is?

A. Bureau of Criminal Investigation, Shield Unit. We do criminal interdiction on the highways.

Q. What does that mean?

A. We look for illegal activity moving up and down the interstate in Pennsylvania.

Q. Where do you work out of?

A. My office is stationed in Harrisburg, but we cover 26 counties here in the central district.

Q. When you work, are you in uniform?

A. Uniform, yes.

Q. Are you in a marked vehicle?

A. I patrol in an unmarked vehicle.

Q. Do you work alone?

A. No, I have a partner.

Q. Directing your attention to September 17th of last year, [9] 2014, which I believe was a Wednesday, were you working that day?

A. Yes.

Q. As part of your duties that you described?

A. Yes.

Q. Were you working with someone?

A. Yes, my partner was out. We were not in the same vehicle, but we were both out.

Q. Who was your partner that day?

A. Trooper Travis Martin.

Q. Directing your attention to approximately, I believe it was around 6, 6:30 that evening, where were you located?

A. I was stationary on Interstate—the center median of Interstate 81 at approximately mile marker 78.

Q. And where would that be? To give us an idea, pick an exit?

A. North of Exit 77.

THE COURT: I don't know about the exit numbers.

BY MR. BEHE:

Q. Is that near Linglestown? Is it Grantville? Where would it be? You're heading towards?

A. It would be the Hershey exit, State Route 39.

Q. And you were watching traffic that would be facing in the direction of Harrisburg?

A. Yes, correct, southbound traffic.

[10]

Q. The next exit would probably be the Linglestown exit?

A. No, the next exit would be the Hershey exit.

Q. The Hershey exit?

A. Followed by the Linglestown exit.

Q. You're watching traffic that's heading in the direction of Harrisburg, correct?

A. Correct.

Q. When you say you're sitting in the center median, what is that area like?

A. There's a cutout area, it's for emergency vehicles only.

Q. And you were in an unmarked vehicle?

A. Correct.

Q. Describe—well, where was your partner, Trooper Martin?

A. He was further south. I believe he was sitting at mile marker 75. So he was actually between the Hershey exit and the Linglestown exit.

Q. Was he in an unmarked unit as well?

A. He was in a marked unit.

Q. Tell us what happened then as you're sitting there?

A. I was observing traffic, southbound traffic. At that time there was a group of cars coming by. I observed a gray rental vehicle pass my location. The driver of the vehicle was not visible. His hands were

approximately 10 and 2, and he was pushed back, so he would be sitting behind the middle pillar of your vehicle. We call it the B pillar. So if you were facing [11] a car sideways, you would not be able to see any occupants right through the window.

Q. So this car was passing you heading in the direction of Harrisburg?

A. Correct.

Q. And you were able to determine as it goes by you that it's a rental vehicle?

A. Yes.

Q. How do you do that?

A. Rental companies put what they call bar code in the back comers of the windows. So when the person rents the vehicle, it's their exit, they get scanned before they leave the rental company.

Q. So you observed that on this car?

A. Yes.

Q. And you described the driver's hands as appearing to be in 10 and 2. Do you mean if you were looking at a clock, where 10:00 is and 2:00 is?

A. Yes.

Q. And that you couldn't see the occupant because of the way they were sitting in the seat?

A. Yes, they were sitting way back.

Q. None of those is a violation of the Motor Vehicle Code, correct?

A. No.

[12]

Q. But what did you do after you observed this?

A. It drew my attention. So at that point, I pulled from my stationary location and I began to follow the vehicle.

Q. Now were there other vehicles in the same lane as the vehicle you were attempting to follow?

A. Yes.

Q. Which lane was that?

A. Left lane.

Q. And describe for us what happens as you are trying to catch up to the vehicle that caught your attention?

A. As I continue to approach, and we continue southbound, vehicles who previously observed me start to get out of the way. They changed from the left lane to the right lane to continue the path. We continue for several periods, mile markers. I don't know the exact. I'm guessing roughly a half mile to a mile, maybe two miles. Vehicles continue to get to the

left lane—or get to the right lane, excuse me, change to the right lane.

Q. Is that what they're supposed to do?

A. Yes. There was a truck that was leading—there was two trucks that were in the left lane currently. The first truck switches over to the right lane. And as we're approaching mile marker 75 where my partner is sitting with his marked unit, the other truck changes over to the right lane.

Q. But what about the rental car that you're following?

[13]

A. At that point, the rental car is now the lead vehicle in the left lane of travel.

Q. Did it make any attempt to get over?

A. No, he did not. There was a period between the two trucks where he was to change over to the right lane and continue down south until—continue southbound until preparing to overtake the truck further down.

Q. So you're saying the car stayed in the left lane longer than it was supposed to when it had an opportunity to get over to the right lane like it's supposed to?

A. Correct.

Q. Was there any entrance ramp that would have prevented this car from getting over in the right lane where traffic would be getting onto the interstate that he would have an explanation that he couldn't get over safely?

A. No.

Q. And how far do you think the car stayed in the lead position without getting over in the left lane?

A. Between the—I estimate the distance between the two trucks was approximately two-tenths of a mile.

Q. Is this a violation of the Pennsylvania Motor Vehicle Code?

A. Yes.

Q. What is the violation in question?

A. 3313(d)(1).

[14]

Q. What does it prohibit?

A. Traveling in the left lane on limited access highways.

Q. What does that specifically prohibit?

A. It means if you are traveling on a limited access highway, you're required to drive in the right lane unless actively overtaking another vehicle. There's

exceptions to it. One, you're in the process of overtaking a vehicle. Two, traveling at a speed greater than the other vehicles. Three, preparing to make a left-hand turn. And four, you're coming upon a ramp where someone would be coming on from the left-hand side—right-hand side, excuse me, coming right to left.

Q. In your view, there was a point in time where the vehicle should have gotten over behind the one truck that moved into the right lane?

A. Yes.

Q. But continued on in the left lane?

A. Correct.

Q. And eventually was pulled over by you, correct?

A. Correct.

Q. What was your intention when you pulled him over with regards to citing or warning?

A. Issuing a warning.

Q. What's that?

A. It's just a notification that the individual was stopped. There's no points, no penalties, just a state police record [15] that we did stop you.

Q. And once you pulled the vehicle over, what happens?

A. The first thing I observed was extreme nervousness from the operator.

Q. I guess that means you approached the vehicle?

A. Yeah, I approached the vehicle from the passenger side.

Q. Why do you go to up to the passenger side?

A. Just safer for our purposes. If the vehicle—if my patrol vehicle is struck, I'll have time to get out of the way instead of being—I will jump out of traffic instead of driver side jumping into traffic.

Q. So you approached the driver's side—the passenger's side, correct?

A. Correct.

Q. Was there anybody else—how many people were in the vehicle?

A. One occupant.

Q. Do you see the occupant in court today?

A. Yes, he's Mr. Byrd in the red jumpsuit.

Q. Again, go back to what you first observed about the driver?

A. Extreme nervousness. Well, first I approached the vehicle and I noticed his hands were shaking. I identified myself, explained the reason for the stop. At that point Mr. Byrd, you know, argued with me a

little bit or questioned his violation and [16] explained that the truck, that he was trying to pass the other truck. And we went back and forth.

And then he asked me if I was going to give him a ticket, and I asked him if he wanted a ticket, and he said, no, because I wasn't going to give him a ticket. At that point I requested a driver's license. I asked for the rental agreement. And at that point he was unable to—he gave me the rental agreement. He stated that it was rented by—he was not the renter and a friend rented the vehicle. He provided me—

Q. Wait. Did he say his wife rented the vehicle or did he say a friend rented the vehicle?

A. No, a friend.

Q. What happens then?

A. He did not have his driver's license at the time. He handed me a piece of paper with a driver's number on it and a name and date of birth.

Q. Did he explain to you why he didn't have his driver's license?

A. I believe he said he washed it before the trip. It was in his wallet in the washer or something to that effect.

Q. So what do you do? Do you continue to observe this nervousness that you described?

A. Yes. He continues to fumble around through the car sporadically looking for, you know, different

items, for the rental agreement. He actually reaches at the center console [17] two or three times, but as soon as he puts his hand on it, he pulls away from it as if he didn't want to open it. He picked up a sweatshirt that was on the passenger floor two or three times going through the sweatshirt to see if the rental agreement was there. He kept insisting that his license was good, that the piece of paper was good for his license, that he did wash it. And he kept going back and forth with that.

Q. So what do you do then?

A. Eventually I—he does provide the rental agreement and I return to my patrol vehicle. I begin to run the information.

Q. Is that standard in a traffic stop, that you do checks like that, run the information, check criminal history, see if there's outstanding warrants, things of that sort?

A. Yes, every time.

Q. And what did you do here?

A. I begin to run the information, the name and date of birth, contact our intelligence center. Being that there was no picture—in Pennsylvania, when you run name, date of birth, and a driver's license, a Pennsylvania resident's photo will come up. If you're out-of-state, we have to contact our intelligence center who attempts to get the photo license from the outside state.

As we're sitting there, the sun continues to lower. We're in a bad location. Sun is pointed directly at us. So vehicles coming to our—coming south from our rear, in my opinion, are [18] having a hard time, you know, seeing us at our location. I get out of my vehicle. I return to the passenger side. And I asked Mr. Byrd to move his vehicle further south to a location where it would be safer.

Q. And did he do that?

A. Yes.

Q. So you allowed Mr. Byrd to have complete control of his car, to start it up, to re-enter Interstate 81, and travel now towards the Linglestown exit?

A. Yes.

Q. What did you do?

A. I followed behind.

Q. And then did he pull over again?

A. Yes.

Q. What happens after he pulls over and, I assume, you pull over as well?

A. Yes. I continue running information. The driver's license, I don't remember, I could not—I don't know if I found the license or not, but when running name and date, of birth, it came back to a different name.

Q. What do you mean by that?

A. I believe the name was James Carter from—the name and date of birth. It would be an alias. The Terrence Byrd came back to a—a Terrence T. Byrd came back to a James Carter with a different FBI number, they call it.

[19]

Q. So the Defendant gave you his name and date of birth. You run it. And it comes back to somebody named James Carter?

A. The name and date of birth was on the card with the New York driver's license number that he gave.

Q. So he gives you a card, and it comes back when you run it to somebody who isn't Terrence Byrd, it says James Carter?

A. Yes.

Q. What does that—does that cause you any concern or raise any suspicions with you?

A. Yes, quite a few.

Q. What do you do at that point?

A. At that point my partner arrives on scene. We continue checks running different names. My partner actually reapproaches Mr. Byrd—

MR. THORNTON: Your Honor, at this point the partner is here in the courtroom. We would ask that he be sequestered.

THE COURT: Pardon me?

MR. THORNTON: The trooper is here in the courtroom. We'd ask he be sequestered at this point.

THE COURT: Oh, okay. All right. We'll ask him to leave.

(Complied.)

BY MR. BEHE:

Q. Your partner apparently had arrived on scene?

A. Yes.

[20]

Q. In his marked vehicle?

A. Yes.

Q. And you said he got in your car?

A. He stood outside my vehicle.

Q. What happens then?

A. We continued checks. I run the information through our PaCIC, our intelligence center, the name and date of birth, the New York OLN.

Q. What's an OLN?

A. Operator's license number, sorry. And at that point I—let me back up. With the James Carter, with the alias of Terrence Byrd, there was a violation warrant out of New Jersey. So from that information, Harrisburg dispatch is who we dispatch out through, the dispatcher contacts what they call the ORI, the originating agency. That's who enters the warrant.

They have to—the warrant was for a probation violation, and it was limited extradition. So even though Pennsylvania is a neighboring state, we were out of that extradition area. But that takes some time. He has to call the ORI and verify that we have this individual stopped, and do you want him, yes or no? And then we make arrangements from there.

Q. All right. So you pulled an individual over who's visibly nervous when you approached the car and discuss things with him?

[21]

A. Yes.

Q. He gives you identification and a date of birth on this piece of paper that is supposed to be his substitute driver's license from New York. And when you run that information, it comes back to a name completely different, a James Carter?

A. Yes.

Q. And when you run that, it turns out there was an arrest warrant for this James Carter out of New Jersey; correct?

A. Yes.

Q. Does all of this raise suspicion in your mind, you got an individual pulled over now who has an outstanding warrant for his arrest?

A. Yes.

Q. Did you run his criminal history to see if that caused you any concern?

A. Yes.

Q. What were some of the things that you determined from running his criminal history?

A. He had prior convictions or charges for weapons violations, assault on police, drug charges, assault charges, domestic charges.

Q. And when you were in the car, does your partner ever approach the vehicle?

A. Yes, on several different occasions.

Q. And why is that?

[22]

A. Confirm social security numbers, dates of birth, things of that nature.

Q. Now we've only been taking testimony here for maybe 15, 20 minutes. Was this taking considerably longer than that while you're sitting on the roadside to run all this information?

A. Yes, a lot longer.

Q. And what happens? What's the next thing that happens?

A. Eventually, we do confirm that Mr. Byrd is James Carter. It's one and the same person. At that point I have the warrant in hand. I have the rental agreement. I asked Mr. Byrd to step from the vehicle. I explained to him—I apologized that the stop took so long and that there was some confusion about who he really was.

Q. So you're actually apologizing to him because of the length of time that it took for you to verify that he has two names?

A. Yes. I told him why the delay took so long. And then I asked him about a previous arrest. And he said it was from way back in the day, he was arrested under that name, that's the name he gave, and his real name is Terrence Byrd.

Q. Did you tell him that there was an outstanding warrant for him in New Jersey?

A. Yes. I told him if he was—the warrant was valid through New Jersey, and if he was standing in New Jersey right now, he'd be going to jail.

[23]

Q. How is he acting at this point? Do you still observe this nervousness that you did before?

A. Yes. There's a nervous laughter, as I call it. He's not able to stand still. He's dancing back and forth, pacing back and forth a little bit.

Q. And did you still have suspicion that something might be going on?

A. Yes.

Q. What did you do? Did you ask him any questions at that point?

A. I asked him if there was anything illegal in the vehicle, and I asked him for consent to search the vehicle.

Q. Did he mention if he had used any controlled substances?

A. He stated that there was a blunt in the vehicle and offered to get it for us.

Q. What's a blunt?

A. Smoked marijuana cigarette.

Q. Do you recall if he said that he had smoked it?

A. I don't recall. His tongue was green, so that's an indicator that he had smoked it. There was no odor though.

Q. Are you permitted to possess marijuana in Pennsylvania?

A. No.

Q. Does that give you probable cause to search the vehicle in and of itself?

A. Yes.

[24]

Q. And as you're asking him for consent, does he eventually consent to the search of the vehicle?

A. Yes. He asked—he asked us back several times, do you want to search my vehicle, you want to search the vehicle? Then he offered to get the blunt. And then he said, yeah, you can search the vehicle.

Q. When he offered to get back in his own car and retrieve the blunt, did you let him do that?

A. No, absolutely not.

Q. So once you get consent, what takes place then?

A. I start to—my partner stands outside with Mr. Byrd on the right side of the vehicle, and I begin my search on the driver's side area. While I'm searching the area, the driver's side part of the car, Mr. Byrd is talking with my partner and admits to cocaine usage. Mr. Byrd was extremely nervous at this point as he's actually walking back and forth beside the car and actually walking towards the car on several times when my partner tells him to stand back, stand back. At one point, he actually kneels down on the side of the road. He's kneeling on his knees.

Q. What kind of area was it?

A. A grassy area, right of the right shoulder. At that time an off-duty trooper just happens to stop. Trooper Swope. He's just standing. He's in plain clothes. He's not on duty. He's just making sure we're okay. At that point he stands back to [25] the right, and Trooper Martin proceeds—we don't search alone. So there's two of us, and in this case we had a third person.

Trooper Martin advised me to pop the trunk, he was going to start the search in the trunk area. He popped the trunk. Mr. Byrd was still visible to us, and I could see that he was still in the process of rocking back and forth and kneeling down. I explained that something is not right here, that there's got to be something more than what he's telling us, that he snorted cocaine and the marijuana blunt.

Trooper Martin looks down. He's going through the trunk, and he finds Outlaws motorcycle gang colors and he finds a bulletproof vest. At that point Trooper Martin tells me that he's going to detain Mr. Byrd, he's going to put him in handcuffs. He's not under arrest at that point, but he's detained for the period of the stop. So Trooper Martin steps to the side of the vehicle and explains to Mr. Byrd, listen, you're not under arrest, but I'm going to detain you. At that point Mr. Byrd turns south and takes off running.

Q. All right. He actually just sprints away from you?

A. Yes.

Q. How many officers—how many troopers chase or join in the chase?

A. Three.

Q. Describe the chase for us, where you are headed and where [26] does Mr. Byrd run?

A. We continue south approximately a hundred yards. There's a roadside wood line fence that you can't see visible from the road. Mr. Byrd makes a hard right and climbs over the fence. Trooper Swope is first; he's in plain clothes, Trooper Martin, and then myself. We chase him up a slight embankment. And then Mr. Byrd makes a hard right back parallel to our vehicles but still in the wood line. It's actually somebody's back yard there. And there's another fence there.

Trooper Swope ordered Mr. Byrd to the ground. He was taken to the ground, taken into custody without incident. He admitted that there was heroin in the car. He was brought back to the vehicle. The items were retrieved from the vehicle. It was towed back to Harrisburg. Mr. Byrd was transported back to Harrisburg barracks. And that was the end of my interaction with Mr. Byrd.

Q. Did you observe the heroin in the trunk of the car when you were at the roadside?

A. Yes. It was in a black bag that—there was—the heroin was on dried rice in a gallon size bag Ziploc shut inside a black garbage bag.

Q. Prior to Mr. Byrd fleeing from the scene of the stop, did he make any statements, if you can recall, to you or Trooper Martin about fighting with you or getting into any sort of fight with the police?

[27]

A. No. It was—there was no tension during the stop. It was a cordial conversation.

Q. Did you tell him anything at all about the rental agreement and whether he was allowed to be operating the vehicle?

A. Yes. That was at the time of issuing the warning, I advised him that he was not authorized to actually drive the vehicle because he was not on the rental agreement.

Q. At any time did he tell you, my wife rented this vehicle for me?

A. I don't believe so, no.

Q. When he was in the car, did you observe him use his phone at all?

A. Not with my interaction to him, no.

Q. Did you issue him a warning?

A. Yes.

Q. What was the warning for?

A. Traveling in the left lane.

MR. BEHE: That's all I have.

THE COURT: Okay.

MR. THORNTON: Thank you, Your Honor.

**CROSS EXAMINATION**

BY MR. THORNTON:

Q. You indicated just now that you're not really sure whether he told you that his wife rented the vehicle for him, are you?

[28]

A. I can't say a hundred percent.

Q. And you just told us that he wasn't using the telephone when he was in the car?

A. Not with me.

Q. Not with you? You mean, not while you were talking to him?

A. Yes.

Q. And you only went up to the car the original time after it was pulled over?

A. Twice.

Q. And the second time was afterwards when you got him out?

A. Yes. No, third time is when I got him out.

Q. Okay. Let's go back to the beginning of this whole thing, if we could. What time was it when you were sitting there and you observed this car go by?

A. I'm not sure of the exact time.

MR. THORNTON: Could I approach the witness, Your Honor?

THE COURT: Sure.

BY MR. THORNTON:

Q. I'd like to show you—I will leave you with a whole pile of exhibits.

MR. THORNTON: Your Honor, I believe we provided the exhibits to the Court.

THE COURT: Yeah, we have them.

[29]

BY MR. THORNTON:

Q. I'd like you to look at this Exhibit No. 7, if you could. Is that your police report?

A. Yes.

Q. What time does it say on there?

A. 18:10 hours.

Q. So that would be 6:10 p.m., correct?

A. Yes.

Q. So this stop began, you pulled out at 6:10 p.m.?

A. Approximately.

Q. Within that minute, right? Are you saying it was really 6:13 or 6:14?

A. I don't know the exact time. I didn't look at my watch exactly when I pulled out.

Q. Where does that 6:10 come from? You put that on there, didn't you? Are you saying that's inaccurate?

A. No, it's approximate. I don't know.

Q. So you're sitting there alongside the highway. On the right-hand side of the highway or the left-hand side of the highway?

THE COURT: In the center.

BY MR. THORNTON:

Q. In the center lane, in the median between?

A. Yes.

Q. In the median when you are sitting there, the car goes by, [30] and you see a person sitting in the car with his hands at 10 and 2 on the steering wheel, and you pulled out to follow him; right?

A. No.

Q. You did not?

A. I don't see a person in the car.

Q. You didn't—so you thought there was no one in the car?

A. I can't see the person in the car.

Q. I'd like to have you look at what is marked as Defendant's Exhibit No. 3. Now is that a picture of the type of vehicle that he was driving?

A. Actually, I believe this is a newer model of it.

Q. Wasn't it a 2014 Ford Fusion? Isn't that what it says in your police report?

A. Yes.

Q. So actually, that is the car; correct?

A. Yes.

Q. So when you said you didn't think it was the car, you were incorrect; right?

A. Correct.

Q. That car, the 2014 Ford Fusion, when a person is sitting in the car, and they're driving up towards you, you must have been able to see him initially when he was driving towards you; right? When he's coming up the highway, you must have been able to see in the front of the car and see there was a person [31] sitting in there; right?

A. I don't know. He was in a row of traffic.

Q. So you don't know if you looked to see if there was anybody in there?

A. There was five or six cars in the line. I don't know that I specifically saw Mr. Byrd, no.

Q. How many of the other cars were the people sitting back towards the back?

A. I can't answer that.

Q. Because you didn't look at them?

A. Because I don't recall. I don't know.

Q. So—well, at any rate, we'll keep on there. I'd also like to ask you to look at Defendant's Exhibit Nos. 1 and 2, if you could. Would you agree with me that 1 is a photocopy of a Microsoft map of 81, is that correct?

A. Correct.

Q. And on that map, I personally have written in a couple of numbers, the 75.4. Now is that where you were sitting?

A. No.

Q. Where were you sitting exactly?

A. Closer to your 77. Actually north of that, north of 39.

Q. Where you pulled him over, was it 75.4 originally?

A. No. I originally pulled him over at—

Q. Go ahead.

A. —south of 75.4, right at that curve, past the curve.

[32]

Q. Can I ask you to look at the police report, which is Exhibit No. 7, not on the cover page, but the second page which I wrote a 1 on. It says there in—it has a list of numbers, it goes down to number 12. And number 12, it says you were performing patrol duties on Interstate 81 at mile marker 75.4?

A. That's where the violation occurred.

Q. Which violation is that?

A. Traveling in the left lane.

Q. So is that the exact spot where he was passing the car—passing the truck?

A. That's where he was not passing the vehicle. That's where he was traveling in the left lane not overtaking anybody.

Q. In between two trucks?

A. In between two trucks in the right lane.

Q. And what you wanted him to do at that point was go in between two trucks on Route 81?

A. There's a period there. There's a space that he's required to change lanes.

Q. We'll see the video in a second. So you pulled—when you say—when your report says you were performing patrol duties on Interstate 81 at 75.4, that's not where you were sitting?

A. That's not where I was sitting, no.

Q. Now if you look down there a couple sentences later, it says, I was traveling in the left lane, and XXX vehicles in [33] front of my patrol vehicle was a gray in color Ford Fusion traveling in the left lane. The gray vehicle traveled in the left lane for approximately two miles without overtaking another vehicle. I was directly behind the gray Ford at mile marker 73.8 and initiated the stop. Now is that correct?

A. Well, the miles is off. It wasn't two miles. It could be a typo. Two-tenths of a mile. But it's approximate. I didn't clock it exactly.

Q. So the two miles that's written in your police report is inaccurate, is that correct?

A. Yes, that's inaccurate.

Q. And you wrote this report, right?

A. Yes.

Q. When that car came by, you had no prior warning to look for that vehicle? No one—you weren't part of any interdiction effort or anyone else who told you to be looking for that vehicle?

A. No, sir.

Q. So the only reason you pulled out was the fact that he was at 10 and 2 and you couldn't see him?

A. In a rental vehicle, that's what drew my attention to it, yes.

Q. Absolutely none of those things are illegal?

A. Absolutely not.

Q. So you're following him just because you want to follow [34] him?

A. Yes.

Q. Now at that time, 6:10 in the evening, I assume that you have spent a fair amount of time on 81 and you understand that 6:10 in the evening is rush hour; right?

A. Correct.

Q. And there's very very heavy traffic on Route 81 during rush hour, isn't there?

A. Sure.

Q. Sometimes it even comes to a complete stop on Route 81, doesn't it?

A. At times, yes.

Q. On this date, there was heavy traffic out there, wasn't there?

A. Yes.

Q. And it's a very congested area?

A. Yes.

Q. So at 6:10 p.m., you see a group of cars go by you?

A. Correct.

Q. You and Trooper Martin work as a team?

A. Yes.

Q. Have you worked as a team for a while?

A. Yes.

Q. How long?

A. Over a year.

[35]

Q. When you were sitting in the median strip, were you behind any bushes? Was anything obstructing anybody's view of you?

A. No.

Q. Did you have—was your view obstructed in either direction for any period?

A. No. Obstructed from what?

Q. From seeing the cars in front? Was there a bush—

A. No, no, no.

Q. So you're easily visible sitting in the middle lane?

A. Yes.

Q. Or sitting in the median strip, I'm sorry?

A. Yes.

Q. When that automobile goes by, I'm sure you don't know exactly what speed it was going?

A. No idea.

Q. Now normally if a car is going—well, let me ask you this first. What is the speed limit at that area?

A. 65 miles per hour.

Q. So at 65 miles per hour, how many feet does a car travel per second?

A. I don't know. I don't have the math in front of me.

Q. You don't have a map?

A. Math. I don't have the math in front of me.

Q. I can give you the math, and I've got a calculator right here. At 65 miles an hour, is a car travel approximately 95.3 [36] feet per second?

A. Approximate.

Q. So that in front of you, you're able to view this car, it's moving at 65 miles an hour, it's moving almost a hundred feet per second? So your view of this car was just instantaneous, you didn't have a long time to look, did you?

A. No.

Q. Now in your police report, which is marked as Defendant's Exhibit No. 7, at the top of the second page past the cover page, the first page past the cover page, it says, reason for stop, traveling in the left lane. Is that the whole reason for the stop?

A. Yes.

Q. So he did absolutely nothing else wrong up to that point, did he?

A. No.

Q. When you pulled out, there were how many cars between you and Mr. Byrd?

A. I don't know the exact number.

Q. When you pulled out, there were two trucks in the right-hand lane, and Mr. Byrd was the lead car in front of four to five automobiles; is that right?

A. Ask me that again.

Q. All right. When you pulled out—I will ask you in a two-part question. In the right lane, when you pulled out, [37] there were two trucks; is that correct?

A. In the right lane?

Q. In the right lane?

A. I don't know. I don't know what was in the right lane when I pulled out.

Q. So when you pulled out, you pulled behind a line of cars; correct?

A. Correct.

Q. What was next to that line of cars? You had to pass those people.

A. I don't know what type of vehicles those were. There were vehicles there, but I don't know if they were trucks or cars.

Q. Was that line of cars that you pulled behind—well, let me ask it differently. When you pulled out, you pulled into the left lane; correct?

A. Correct.

Q. And you got behind that line of cars, right?

A. Right.

Q. That line of cars then passed vehicles that were in the right lane, correct?

A. Correct.

Q. At the beginning of that line of cars was not Mr. Byrd, but was a truck?

A. Correct.

Q. All those cars were behind that truck?

[38]

A. Correct.

Q. Including Mr. Byrd?

A. Correct.

Q. How fast were you going?

A. No idea.

Q. Not exceeding the speed limit?

A. No.

Q. All those—

A. Me or Mr. Byrd?

Q. Well, you're directly behind that line of traffic. No one is exceeding the speed limit, right?

A. Yeah, no.

Q. Is everybody below the speed limit? At the speed limit? Where are they?

A. I'm not a hundred—minimum, at it. I think below it, maybe potentially.

Q. Is that unusual on Route 81 if the traffic would be going below the speed limit at times during rush hour?

A. That's usual when they observe me sitting in the center median.

Q. It's also usual on a regular basis just because traffic bunches up, isn't it?

A. I can't say every day.

Q. When you pulled out then, you're behind a number of cars, you're not sure how many, there's a truck in the front of Mr. [39] Byrd, and then Mr. Byrd is behind the truck, and then the cars are between you and Mr. Byrd; is that right?

A. Yes.

Q. And when you pull out, it is approximately 6, I'm guessing, 6:11 p.m.

MR. THORNTON: Your Honor, we'd like to show the video at this point, if we could.

THE COURT: All right.

(Video begins.)

BY MR. THORNTON:

Q. And if we could just keep it right there at the very beginning before we start. I'd ask you to look. We have this video on a different player than was provided by the Pennsylvania State Police. But I

think you'll find, if you look at Exhibit No. 4, Defendant's Exhibit No. 4, if you look at Defendant's Exhibit No. 4 and look at the screen in front of you, can you tell me if that is pretty much the exact time that the screen is showing.

A. Of?

Q. If you look at 4, if you take Defendant's Exhibit No. 4 and look at it, it says on top of Defendant's Exhibit No. 4 that the time is 18:11:11, which would be 6:11 p.m. and 11 seconds; correct?

A. Correct.

Q. If you look at the screen in front of you, would you agree [40] with me that the screen is depicting 6:11 or within milliseconds there?

A. Correct.

Q. And the reason why I'm asking you that is, you see on the bottom left of the screen down below the bar is a time. So this is when you have turned on the video in your police car, correct?

A. No.

Q. It's not?

A. No.

Q. When did you turn it on? This was the video that was provided to us at any rate.

A. The Pennsylvania State Police dash cam videos are constantly running.

Q. Oh, okay.

A. They do not save unless the record button is hit or the lights are activated. Once I activated my lights, the video goes back automatically 30 seconds. It will save from 30 seconds prior to me hitting my lights until I shut it off.

Q. Is that why when we turn this on, there's no audio for the first 30 seconds?

A. Correct.

Q. So when you actually turned it on is when the audio starts?

A. After the—it doesn't record—it can't record audio [41] for the previous 30 seconds.

Q. How did you turn it on? Did you turn on your lights?

A. There's a button on my steering wheel, yes.

Q. Did you turn on your lights on the recorder?

A. Not at this point, no.

Q. You turned it on 30 seconds from here?

A. Yes.

Q. Okay. So at the bottom there—at any rate, so you've been following Mr. Byrd here for a distance?

A. Correct.

Q. And there's only one vehicle now between you and him, correct?

A. Correct.

Q. And Mr. Byrd is in front of this vehicle here, correct?

A. Correct.

Q. Now isn't this vehicle doing the exact same thing that Mr. Byrd is doing? Isn't it staying in the left lane?

A. Yes.

Q. Why didn't you pull him over?

A. Mr. Byrd is the lead car.

Q. They're both doing the exact same thing though, right?

A. Mr. Byrd is the one holding up traffic right now.

Q. How fast were they going if they were holding up traffic?

A. The speed limit at best.

Q. So he's going the speed limit, but he's holding up [42] traffic?

A. He's allowed to increase his speed to overtake a vehicle.

Q. So you pulled him over because he wasn't speeding?

A. He's traveling in the left lane.

Q. We can play the video at this point, Your Honor.

A. The violation already occurred before this video.

(Video resumed playing.)

Q. Could we stop it there, please? The violation had already occurred?

A. The violation is not on this. The violation is between this truck and a truck that is behind him.

Q. Now those trucks—this was the truck that was in front of Mr. Byrd at the time the violation occurred then; right?

A. No.

Q. That truck was in the left lane, wasn't it?

A. Both trucks were in the left lane at some point.

Q. Okay. Let's go back to the map, if we could. If we can go to Defendant's Exhibit No. 2. Now the distance—I'm sorry. Defendant's Exhibit No. 1. And

it's your testimony that both those trucks were in the left lane?

A. One of them definitely was. I can't say both of them.

Q. Didn't you just say a minute ago that both of them were in?

A. Well, I mean, I can't say a hundred percent certain.

Q. Well, we are kind of under oath here, and it would be [43] helpful that if you're not certain—

A. I can't recall. I don't know, so I can't answer that.

Q. A minute ago, you said they definitely were, and now you can't recall. So now we're at—if we look at Defendant's Exhibit No. 1, if you could tell us where exactly the violation occurred? If you pulled him over at 75.4, right?

A. No, I didn't pull him over at 75.4.

Q. That's what you said in your police report—oh, I'm sorry. You were behind him at 73.8?

A. 73.8.

Q. And pulled him over. So you were behind from him 75.4 to 73.8, is that correct?

A. I was behind him from 77 to 73.8.

Q. During that time, you can't recall what trucks were in the right lane or what trucks were in the left lane?

A. As you stated earlier, it's heavy traffic congested.

Q. So the distance you would have followed him from 77, you would have first had to pull in behind that line of traffic?

A. Correct.

Q. You had to make all the cars in front of you move? How many cars moved out of the way?

A. I don't have the total number.

Q. Would you agree it was four to five vehicles in the left lane?

A. I can't a hundred percent say, so I don't want to answer.

[44]

Q. If you could look at Defendant's Exhibit No. 9, which is the preliminary hearing transcript in this matter. Would you agree that on page 4, lines 18 and 19, the vehicle was approximately four or five vehicles traveling in the left lane in front of you. Would you agree that's accurate?

A. Yes. It says, approximately.

Q. And that was under oath at the preliminary hearing, correct?

A. Yes.

Q. And you would agree that Mr. Byrd was behind the truck, correct?

A. Yes.

Q. So the truck was the one that was holding up the traffic at that point, wasn't it?

A. And got back over.

Q. And as soon as the truck got back over, Mr. Byrd passed that truck and got in front of it, didn't he?

A. Actually, both of them.

Q. Passed both trucks and got in front of them?

A. As I said earlier, the violation occurred between this truck and another truck back at 75.4. He should have changed lanes to get from the left lane to the right lane. Mr. Byrd is the lead vehicle from just before 75.4 to 73.8.

Q. So you're saying that truck that's in front of him moved over at 75.4, and then he stayed in the left lane all the way [45] from 75.4 to 73.8?

A. Yes.

Q. Is that your testimony?

A. Yes.

Q. And what you're saying Mr. Byrd should have done is, as soon as that truck that was in front of him moved over, he should have gotten behind that truck? He shouldn't have passed that truck even if he wasn't going over the speed limit?

A. This truck or the previous truck?

Q. The truck that's in front of him?

MR. BEHE: That didn't answer the witness's question.

BY MR. THORNTON:

Q. The truck that's on the screen right now?

A. He does the correct thing after this truck. The violation already occurred.

Q. But you would have had him go in between the two trucks is what you're saying?

A. As he's supposed to.

Q. If he's going the speed limit and he is passing the trucks, shouldn't he stay in the left lane?

A. No. You're required to drive in the right lane unless you're overtaking somebody.

Q. Wasn't he overtaking somebody?

A. He already overtook that truck. Then he changes lanes again to overtake this truck. He's supposed to change lanes to [46] overtake this truck.

Q. You would have had him go in and back out rather than pass the two trucks?

A. That's what you're required to do. That's why the traffic is backed up.

Q. Which nobody else did either, right? I mean, this car in front of you didn't do it?

A. He's the lead vehicle.

Q. Mr. Byrd is the lead vehicle?

A. Right now, yes, he is.

(Video resumed playing.)

Q. And that's Mr. Byrd's car right there?

A. Correct.

Q. So immediately after he passed that truck, he got directly in the right lane, didn't he?

A. Yes.

Q. And there's no cars in front of him?

A. No.

Q. How fast was that truck going?

A. I don't know.

Q. Well below the speed limit?

A. I can't say for sure.

Q. It would have to be well below the speed limit, wouldn't it, because Mr. Byrd was doing at best the speed limit, and when he went by the truck, he went by easily, didn't he?

[47]

A. He was below the speed limit, but there was also Trooper Martin in the marked unit sitting in the center median, so all traffic was slowing.

Q. But he—if—

A. Traffic always slows down when they see—

Q. I'm not worried about the police officer, I'm worried about the truck in the right-hand lane.

MR. BEHE: He's trying to answer the question, Your Honor. I think Mr. Thornton should let him answer.

THE COURT: I think you are interrupting.

MR. THORNTON: I'm sorry.

THE WITNESS: The truck is going below the speed limit because traffic slows down when there's a police officer sitting in the center median. So the truck is slowing down because he sees a police officer.

BY MR. THORNTON:

Q. You don't know that, do you?

A. It's—

THE COURT: Well, it's his practice, as I understand it, or it's his observation.

BY MR. THORNTON:

Q. So if that truck is in the right-hand lane going 45 miles an hour, Mr. Byrd is going 65, he's supposed to get out of the left lane and get behind that truck that's determined to be doing 45, get back out of the right lane, and then pass the [48] truck is that what you're saying?

A. That's what the Vehicle Code writes.

Q. So every time that you pass a car, you have to immediately get over to the right?

A. That's what the Vehicle Code writes, yes.

Q. Even if that car in front of you is going below the speed limit and causing a danger?

A. Then you overtake him again.

Q. Then what Mr. Byrd did was correct, wasn't it?

A. No. Mr. Byrd should have changed from the right lane. If he was approaching the vehicle, he should have changed back to the left lane, overtook the truck, and then he did the correct thing.

Q. How many cars were behind you?

A. I have no idea.

Q. All the cars that you had passed and forced to move over?

A. I didn't force anybody to move over. Most people change from the left to right lane when they see a police officer pull out.

Q. All the cars that you passed, were they then behind you?

A. I can't say—they were behind me, but I don't know if they were in the left or right lane.

(Video resumed playing.)

MR. BEHE: Your Honor, I don't know if any of the family members are going to be witnesses. If they are, I'd ask [49] that they wait outside.

MR. THORNTON: No, no.

MR. BEHE: Nobody is going to be one? Okay. Thank you. Sorry to interrupt.

BY MR. THORNTON:

Q. While we've got it stopped here, did you see those cars that moved over because you were behind them pass you then?

A. Yes.

Q. And they were all directly behind you, right?

A. Along with the second truck. The truck that Mr. Byrd passed continued in the right lane because he could not get over. But the second truck is in the left lane, as you see right now.

Q. Right. And he got over because you were pulling him over, right?

A. Yes.

Q. And the second truck couldn't get over?

A. Because there were other cars in line.

Q. So those cars would have impeded anyone who would have tried to do what you wanted them to do, which is go in between two trucks and then come back out? If you went in between the two, you would have to wait for that entire lane of traffic to go by, wouldn't you?

A. I don't understand what you're asking me there.

Q. What you said earlier was, Mr. Byrd, after he passed the [50] first truck, should have gotten in between that truck and the truck in front of it; correct?

A. Correct.

Q. And then all those cars that were behind Mr. Byrd, including you and all the cars that are behind you, would have kept Mr. Byrd from being able to get out and get around those trucks?

A. Those cars did exactly what they were supposed to do as I got past them. They changed in the right lane. I passed. They got back out. That's what you were supposed to do.

Q. Even the truck in front of you is going slower than the speed limit?

A. There was a distance between there that he should have got over and he didn't get over.

Q. Even though both lanes—like right here, as we watch here, there's cars in both lanes continuously on 81 during rush hour? And all those cars are to continue moving back and forth from lane to lane? Isn't that dangerous?

A. Not any more dangerous than the person traveling in the left lane going the speed limit or below and traffic backs up the whole way. As you see, he could have gotten back over because the first truck that was in between the two trucks made it to the left lane. So obviously, there was a period he could have got from the right to the left lane. That truck did it.

Q. And probably because you had your lights on and you had [51] made everybody slow down to move over. But you're saying here that someone who is going the speed limit can get stopped? Is that what you're saying? They are being stopped for not exceeding the speed limit?

A. For driving too—if they're causing a hazard.

Q. What was the hazard?

A. If you're slowing up traffic that much that it's backing up, that's a traffic hazard.

Q. But if you're going 65, if you're doing the speed limit, you can't be causing a traffic hazard, can you?

A. If traffic is backing up behind you continuously, it can be a traffic hazard, yes.

Q. So you're supposed to speed so you can let other people speed?

A. You can accelerate to overtake the vehicle. I'm not saying he should speed and stay in the left lane and speed. He can speed to overtake a vehicle. We have to give 6 miles per hour over the posted speed limit, so he's allowed to travel that to overtake another vehicle.

Q. He can, but there's no requirement that you speed, is there?

A. No.

Q. I mean, the Pennsylvania State Police doesn't require people to speed, do they?

A. No.

[52]

(Video resumed playing.)

Q. So there Mr. Byrd just told you, I was doing the speed limit, and you told him he should have been speeding; right?

MR. BEHE: Objection. It said right on the tape what he told him. I mean, he said, you can speed up to pass.

BY MR. THORNTON:

Q. In your—if we could look at Defendant's Exhibit No. 7, the police report that we were previously looking at, in that police report you indicated that he was in the left lane there for over two miles. But then you told us that that is actually incorrect, right?

A. I told you it was an error, yes.

Q. So you are saying that if he was holding up traffic, it was for no more than two-tenths of a mile?

A. Two-tenths of a mile, yeah.

Q. At 65 miles an hour, two-tenths of a mile goes by in a couple of seconds, doesn't it?

A. Yes.

(Video resumed playing.)

Q. If we could go back to the two-tenths of a mile thing. You also testified at the preliminary hearing, which is Defendant's Exhibit No. 9. And on page 18, lines 24, 25, and onto 19, you were asked, Just to make sure I understand, even though he may have been in that left lane for a three-mile stretch that you witnessed, part of that three miles was part [53] of the time when the tractor-trailer was in front of you? And that answer was, Yes. So at the preliminary hearing,

you said it was not two, but actually three miles; right?

A. Yes, from—yes.

Q. But all that is inaccurate, it's really two-tenths of a mile; correct?

A. I didn't say the violation committed in that two or three-mile period.

Q. So if we narrow it down, he was in the left lane for two-tenths of a mile?

A. The violation was in the two-tenths of a mile, yes.

Q. At 65 miles an hour. I noticed here that you're on the right-hand side of the car. You are on the safer side of the car. That's training, I assume?

A. Personal preference.

Q. And at this point, you're trying to get information from him, and he gives you what you called a piece of paper with a driver's license number on it; is that correct?

A. Correct.

Q. Is he about to hand that to you?

A. He does hand it to me after he finds it.

MR. THORNTON: Your Honor, I don't have copies of these, but I'd like to show you what's been

marked as Defendant's Exhibit Nos. 13 and 14. It's not in your pile, I'm sorry. I just marked them this morning.

[54]

BY MR. THORNTON;

Q. And ask you, is that the piece of paper, is 13 the piece of paper, what you called the piece of paper, that he gave you with his driver's license number on it?

A. Yes.

Q. Okay. And 14, just for informative purposes, is a copy of what it would look like if it hadn't been washed?

A. Correct.

Q. The thing that you described as a piece of paper was actually a form from the New York Department of Transportation, wasn't it? It's an interim license that they give out when somebody loses their license? It wasn't just like a piece of notebook paper, it was an official New York license; correct?

A. I don't know.

Q. Well, when you ran that number, it worked out and it came back to the right guy; right?

A. Correct.

(Video resumed playing.)

Q. Now at this point, he's looking through the car for that piece of paper, is that right, for the driver's license and for the rental agreement?

A. Yes.

(Video resumed playing.)

Q. So was Mr. Byrd looking for his wallet when he was looking around inside the car trying to find his wallet?

[55]

A. I don't know what he was looking for. I mean—I don't know—I can't say specifically it was his wallet.

(Video resumed playing.)

Q. So that noise means you're back inside your car?

A. Yes.

Q. And what are you doing there?

A. Typing in the information.

Q. And the information he gave you was?

A. From that New York—the name and date of birth.

Q. When you type that in, what actually comes back on the screen in front of you?

A. I don't remember what initially came back.

Q. I have two other documents which I've marked together as Defendant's Exhibit 12. Are these copies of what comes back on the screen when you type it?

A. Yes.

Q. Okay. So do you see that exact information?

A. Yes.

Q. Okay.

A. Not—

Q. Not in this form?

A. Actually, that form, but it depends if I'm running his name and date of birth for the driver's license check or for the criminal history. At first, it's for the driver's license check.

[56]

Q. Is one of these driver's license?

A. No.

Q. These are both criminal history?

A. Criminal histories, yes.

(Video resumed playing.)

Q. So now you're going to move from 73.8 down to where you're next to the bridge, right?

A. Past the bridge, yes. It's right at the Linglestown exit, the ramp to the Linglestown exit.

Q. At this point you're pulling him over for a left lane violation warning?

A. That's why I stopped him, yes.

Q. At this point you've been to the automobile and you've looked inside? You didn't see any drugs inside the automobile? You didn't see a blunt or anything like that, right?

A. No.

Q. There was nothing illegal in the automobile in plain view you had seen, correct?

A. Correct.

(Video resumed playing.)

Q. There's another voice there. Who's that?

A. Trooper Martin, my partner.

Q. Does he just come and get in the car?

A. He's standing outside the car.

Q. Okay. So at that point there, you just said, this is him. [57] So you've identified Mr. Byrd as Mr. Byrd there, didn't you?

A. No, because of the criminal history, you see it says, James Carter, or something Carter on there.

Q. But you just said, it's him, didn't you? Wasn't that your voice who said, it's him?

A. That matches the description, yes.

Q. I'd like to show you what's been marked as Defendant' s Exhibit No. 12, which is actually two pieces of paper. I'll make them 12 and 12-A. Previously, you said these were the criminal history reports that you received in the automobile?

A. I said they are criminal history. I don't know those are the exact ones I received, but they are criminal history reports, yes.

Q. After this was over, did you print out stuff for discovery or print out things that were provided to the defense, including these?

A. I didn't print them out.

Q. They seem to be printed out at :49. Somebody printed them out?

A. Yes.

Q. On those criminal histories, it says the name James Carter on one, but it says the name Terrence Byrd repeatedly, doesn't it?

A. Under aliases.

Q. But it has Terrence Byrd listed five or six times in—go [58] ahead.

A. But the actual name of the person that we go by is the first name; James Carter. He's telling me he's Terrence Byrd. And I have no photo ID right now.

Q. So you're waiting for New York to come back with a photo?

A. If they can.

Q. But in your mind, it certainly—what did you mean when you said, it's him?

A. Well, the tattoos matched. They're hard to—

Q. Hard to what?

A. To match those.

Q. In your mind, you most likely thought he was Terrence Byrd?

A. Most likely, yes.

(Video resumed playing.)

Q. So that's the New Jersey warrant coming back, correct?

A. No, that's the warrant I can see.

Q. Do you know what warrant that was?

A. It's a probation violation, I believe it was.

Q. Okay. I thought that was out of New Jersey?

A. Yes.

Q. Okay.

A. I don't get the actual warrant. Along with that line, it has a printout, and it has the person's name and it has social security numbers and dates of birth with it. And then it has [59] the ORI, which I explained earlier, which is originating agency. And then you have to call that number to confirm yes or no.

Q. So—but the printout you received, it says specifically they will not extradite him, don't pick him up?

A. We don't go by that, we still call.

Q. Did you call then?

A. The dispatcher calls, yes.

(Video resumed playing.)

Q. You were talking about the center console there, that he was grabbing the center console. Later when you searched the vehicle, there was nothing in the center console, was there?

A. No.

Q. There were no drugs or nothing illegal whatsoever in that console?

A. No.

Q. So your suspicions about the console were just wrong?

A. It was an indicator.

Q. A false indicator?

A. (No response.)

Q. You have to say yes or no.

A. Yes.

(Video resumed playing.)

Q. Who is that going up?

A. Trooper Martin.

[60]

Q. Now at this point, you didn't need any extra information from him? He had already given you a name and license that turned out to be accurate, correct?

A. He signaled Trooper Martin up.

Q. He called Trooper Martin up?

A. Yes.

(Video resumed playing).

Q. I guess you have a microphone on you or something and Trooper Martin does not?

A. Yes.

THE COURT: Mr. Thornton, turn it off a minute. I don't mind watching this if we're going to see something. But is there any way we can—

MR. THORNTON: Your Honor, unfortunately it's all —

THE COURT: What's this supposed to be now? What am I going to see later on?

MR. THORNTON: You will see that the traffic stop is elongated for a half an hour to 45 minutes after they should have given the ticket. If we could just run this for another three minutes, we'll get to the point where we can discuss it more intelligently. If you can give me until about 17, then I'll explain.

MR. BEHE: Before you start, I disagree with the characterization that this was prolonged after the point in time where he could have gotten a ticket. I think the [61] conversation that occurs over this 50-minute video shows that they were consistently trying to figure out who this individual was and reconcile the fact that it comes back as Carter and Mr. Byrd, and that is what consumed almost all the time.

If you cut it off at a certain point, and you don't hear that additional conversation back and forth, you're left with the impression that Mr. Thornton just gave you, that there should have been a warning issued and everything else prolonged it. But if you listen to it, unfortunately, that's how you understand that they were trying this entire time to reconcile who the individual was. So it may be that you have to—

MR. THORNTON: We would agree, Your Honor, but I think we do have to hear the whole thing because actually we believe the entire extra time is spent trying to figure out a way to get him out of the car and get consent.

THE COURT: Trying to figure out what?

MR. THORNTON: Trying to figure out a way to get him out of the car so they can get consent to search the car without any real evidence. If we can get to 17 minutes, Your Honor, I can explain, which is another two minutes or so. I can explain.

THE COURT: All right.

(Video resumed playing.)

BY MR. THORNTON:

Q. It sounds like you're typing there. Is that what you're [62] doing?

A. Yes.

Q. Now, Trooper, you would agree that if you look at the bottom, at the time counter on the bottom there, that you've been sitting, when you first turned on your recorder, it's been 17 minutes and 2 seconds; is that right?

A. Correct.

Q. And if we go back and look at the original Defendant's Exhibit No. 4, the video, you turned on your recorder at 6:11 p.m.; correct?

A. Correct.

Q. So 18:11. So you've been sitting here now for—instead of it being 18:11, it's now 18:28. So 17 minutes later since you turned the recorder on, correct?

A. Yes.

Q. I'd ask you now to look, if you could, at Defendant's Exhibit No. 6, and ask you if that's the warning notice that you gave to Mr. Byrd?

A. Yes.

Q. That warning notice has in it boxes that you have to fill out, including his name, his address, date of birth, license number, owner of the car, and a number of other things that you filled in; correct?

A. Correct.

Q. And if you look on the top right, there is an issued date [63] and an issued time; is that correct?

A. Correct.

Q. The issued time is 18:23, which would be 6:23 p.m.; is that correct?

A. That's correct.

Q. So this citation was actually issued prior to the time that we are looking at right here? This is 16:28?

A. No.

Q. It's not?

A. No.

Q. The citation says 18—

A. The issue time 18:23 is the time it's issued to me.

Q. Which is what?

A. That's the time I bring up the warning notice. That's not the time it's issued to him, that's the time it's brought up.

Q. Oh, correct. But at this point, you finished putting all your information in and you could issue that right now, couldn't you?

A. If it was completed.

Q. What did you have to put in there afterwards after this time?

A. I can do this in sections. I can put in the PV holding stuff, minimize the screen, and then come back and put in—because if you notice, there's actually an error on here. The license number on here is a New Jersey that we later recovered. [64] It's a New Jersey operator's identification number not a New York. So that's an error. That's a typo error because that's actually New Jersey, what you have in your Exhibit 5 at the top. That's an ID only. That's not a New York driver's license.

Q. So Mr. Byrd was carrying—if we look at Exhibit 5, you would agree that Mr. Byrd had a number of different identifications on him, didn't he?

A. He did not provide any of them.

Q. He provided you with the current valid driver's license, correct?

A. Yes. With no identification on it, no picture form of ID on it.

Q. But there's no picture on that license when it's issued by New York at that point, right? I mean, that's an interim license that does not contain a picture; correct?

A. That's correct.

Q. And the information you have on here, PV holding, Grand Central Parkway, all that came off of the information that you gave to Mr. Byrd—or Mr. Byrd gave to you at your initial encounter with him?

A. The rental agreement, correct.

Q. And it does say on the top, issued 18:23?

A. Again, it wasn't issued to him at 18:23.

Q. No, but you could have issued it to him at 18:23 because [65] all of the stuff that you needed to do for the stop was already done, wasn't it?

A. No.

Q. What wasn't done?

A. I don't know that I had his license at that time, his—

Q. You had—

A. I was still waiting on confirmation from the warrant. I was still waiting on a possible picture from New York.

Q. But you had already put his name and everything into this, right, at 16:23?

A. Yeah, but it wasn't issued to him. It was still in my possession.

Q. I'm sorry, 18:23?

A. No. 18:23 is the issue time that I bring it up in my car. It's not the time it's issued to him. It's issued to me at 18:23. I can put in it as I want and put it down as I want. Just because I bring it up at 18:23 doesn't mean I have to start typing everything in there and turn around and issue, especially in this case. We had two different names. We didn't have a positive ID. I can minimize it and come back to it as I am collecting my information from dispatch and from our intelligence center. So just because I pulled it at 18:23, that's what time I pull it. That's not issued to anybody but me.

Q. But the information that you put in there was the [66] information for Terrence T. Byrd, correct, because that's who you believed he was?

A. After I confirmed everything, yes.

Q. Now what exactly did you put into this violation notice after 18:23?

A. What I write on it?

Q. Yes.

A. The lat and longitude of the stop and the NIK test kit at the bottom.

Q. Not the writing itself, but inside the warning notice, the body of the warning notice, can you point to anything that you wrote in there after 18:23?

A. Well, all of it was after 18:23. Everything was put in it after 18:23. When it comes up, it comes up blank. The first box I click is the date. The second is the time. The third is location. And from there, it goes on. So everything is after 18:23.

THE COURT: All right. I think we're going to have to take a break. We'll recess until 1:15 at this point. Please keep an open mind. Don't discuss the case.

COURTROOM DEPUTY: Court's in recess until 1:15.

(Lunch recess was taken at 12:15 p.m. and proceedings reconvened at 1:25 p.m.)

BY MR. THORNTON:

Q. Trooper, before we begin playing the tape again, earlier [67] you mentioned the statute that was involved that you used as a basis for pulling Mr. Byrd over as 3313; 75 Pennsylvania Code 3313, is that right?

A. (D)(1).

Q. (D)(1)?

A. Section (d)(1).

Q. Now (d)(1) says—if I read (d), it says, except as otherwise provided in paragraph 2 and unless otherwise posted, upon all limited access highways having two or more lanes for traffic moving in the same direction, all vehicles shall be driven in the right-hand lanes when available for traffic except when any of the following conditions exist: And (d)(1) one would be, when overtaking and passing another vehicle proceeding in the same direction. Correct?

A. Correct.

Q. And (d)(2) though is, when traveling at a speed greater than the traffic flow; is that right?

A. Yes.

Q. So in this case, if the trucks are going slower than Mr. Byrd, he's allowed to remain in the left-hand lane until he passes those trucks that are going slower than the speed of traffic, isn't he?

A. No.

Q. Why not?

A. He's not actively passing.

[68]

Q. Didn't he just pass that truck at the beginning?

A. He passed the truck. He's required to get back in the right lane because if he passed the truck and he's past it, he's not actively passing another person.

Q. What about the truck that was in front of that truck that he passed?

A. There was a distance between those two trucks. He's required to get back in the right lane.

Q. But if those trucks are slower than the flow of traffic, he's allowed to go past them?

A. He's allow to pass them in the left lane, correct.

Q. We'll play the video now.

(Video resumed playing.)

Q. At that point you already had his driver's license number though, correct, from the driver's ID that he had given you; correct?

A. I had a New York one, yes.

MR. THORNTON: Your Honor, just for the record, I'd like to put in that we just passed the 21 minute mark.

THE COURT: Where are we going?

MR. THORNTON: 50 something.

THE COURT: How many?

MR. THORNTON: 50.

THE COURT: 50 minutes? What are we going to see—stop the tape for a minute. Would you make an offer of what [69] we're going to see?

MR. THORNTON: Your Honor, half of it is for me, and half of it is also what the Government wants to show, I believe, and I don't mean to speak for Mr. Behe. But we intend to show this stop was elongated past the time that was necessary to hand him or give him that warning ticket. And at one point in this, as a matter of fact I can give you an exact time, they say to each other, let's get him out of the car and try to get consent from him, a consent to search. And that happens—

THE COURT: Can you hear that clearly?

MR. THORNTON: You can hear that clearly. That doesn't happen until 38 minutes 35 seconds. But I just wanted to put on the record that we're now at 21:16.

THE COURT: Yeah, I can see that. That's good. So we're not even halfway through?

MR. THORNTON: No, not quite.

THE COURT: I'm reminded that I have a sentencing at 2:00, so we'll have to take a recess at 2:00.

MR. THORNTON: Yes, Your Honor. 51 minutes is when Mr. Byrd runs.

THE COURT: You don't want to move ahead to that?

MR. THORNTON: For me, there's an important part in between, unfortunately. I think Mr. Behe wants to have Your Honor hear the conversation between the troopers when they're [70] making these decisions as to what they're doing, I believe.

MR. BEHE: Yes. I think it's important for the Court to understand that this wasn't a conspiratorial conversation between the officers purposely delaying this car at the scene. As you can hear even at the 20 minute mark, they have no idea who they are and they're trying to identify who the person is. And I think that's what you'll continue to hear. Then their discussions about the demeanor of Mr. Byrd when they approach the car and what they say to him when they issue him the warning. I think those are all important considerations for the Court.

THE COURT: Okay. I'll be patient.

(Video resumed playing.)

BY MR. THORNTON:

Q. Trooper, we're here at 36:05 on the screen here, 36 minutes and 5 seconds. You said, that's him. Does that mean because the picture popped up on the computer and you saw that was him?

A. I don't know—I don't think we ever got a picture to be honest with you.

Q. What made you say, that's him?

A. I don't know if it was the confirmation from PaCIC or—I don't have in front of me—I don't know exactly at that moment what told me it was him.

Q. But you knew at that moment it was Terrence T. Byrd and [71] not James Carter, correct?

A. Yes.

Q. And that's at 36:05?

A. Well, I knew that person was either James Carter or Terrence Byrd. He was one of the—I knew he was one of those. Whether it was one and the same person, we weren't sure exactly at that time.

Q. What more could you have asked for to make sure it was the same person?

A. I didn't know if his real name was James Carter or his real name was Terrence Byrd. But I knew that person was either James Carter or Terrence Byrd.

Q. But you had already written the warning putting his—

A. No. I wrote it as Terrence Byrd, but I don't know if I had it completed at that time.

Q. But you put his name in as Terrence Byrd at that time?

A. Sure.

Q. The only way you would have thought it was James Carter is because you had his name come up one time on an old charge, correct?

A. The first time. The first name.

Q. On an old charge?

A. Correct.

Q. So at this time, you don't have any—you know the New Jersey warrant is not going to pick him up, and the only reason [72] you're on the side of the road there is to determine whether it's James Carter or Terrence Byrd?

A. I don't know that the confirmation came back or not. I mean, those dingings you hear are messages coming from both dispatch and PaCIC. I don't know exactly when that—

Q. When did you find out the warrant was not active?

A. Sometime during this stop,

Q. Before now?

A. I don't know.

Q. Before you got out of the car, you knew it wasn't active?

A. Yes.

Q. Let's see how long it takes for you to get out of the car.

(Video resumed playing.)

Q. So this time the voice, was that you again or was that the other trooper?

A. Trooper Martin.

Q. Trooper Martin said, who's this supposed to be? You guys aren't looking at a picture?

A. We could be. I don't remember. I didn't print it off so I don't know.

Q. So you—so that could have been his picture that popped up, and you could have actually known for sure that was Terrence Byrd, but you just don't know?

A. At that second with that first ding, yes.

Q. Now we've gone a little bit further. Do you still say you [73] just don't know?

A. I don't want to sit here and say I got a picture because I don't remember if I got a picture or not.

Q. So you could have gotten one?

A. I could have, yes.

Q. You could have gotten one actually earlier than this?

A. No.

Q. Why not?

A. Because we get our pictures from intel. I can't access out-of-state pictures.

Q. No, I mean, the intel could have sent you that picture earlier, you just don't remember when it came, if it came at all? You don't remember anything about the picture?

A. No.

Q. Whether it was there or not?

A. No.

Q. Or when—okay. You have to say yes or no.

A. No.

MR. BEHE: there's like seven questions being asked at the same time. I'm not sure which one gets answered.

THE COURT: I'm not sure what's being asked and answered here. What's your last question?

MR. THORNTON: Yes, Your Honor.

BY MR. THORNTON:

Q. I guess I could put all these questions together. You [74] have absolutely no recall at all when the picture got there, if there was ever a picture there?

A. Correct.

(Video resumed playing.)

Q. We are now at 38:41 and someone just said, we could try to get him out and try to get consent. Who was that?

A. Trooper Martin.

MR. BEHE: Could I ask you to back it up? Every time you stop it, I can't hear the whole sentence that's being said. So if you could just back it up a little bit?

(Complied.)

(Video resumed playing.)

BY MR. THORNTON:

Q. Okay. Now that's you, correct, getting out of the car there at 39:02?

A. Correct.

Q. Obviously, you have the written warning in your hand at that point?

A. Correct.

Q. When did you print that written warning out?

A. Right before I got out of the car.

Q. The second before you got out of the car?

A. It takes several seconds before I get out of the car.

Q. Were you printing it while you were talking there?

A. I can't answer that. I don't know.

[75]

Q. Now I noticed you're getting out of the car—well, go ahead. Play some more.

(Video resumed playing.)

Q. Now we're just at 39:12. You've gotten Mr. Byrd out of the car. Before this, both you and the other trooper had gone exclusively to the passenger side window and done all of your conversation through the passenger side window. You could have handed him that warning from the passenger side window, couldn't you have?

A. Yes.

Q. But you didn't. You made him get out into the lane of traffic where it's dangerous, didn't you?

A. Yes.

Q. So dangerous that you didn't even want to go around that corner, did you?

A. If you see 81, it's two lanes over. We're on an exit ramp and he's on the shoulder.

Q. You didn't answer my question. You didn't want to go out there either, did you, but you made him go out there?

A. We're not on 81.

Q. You did not want to go out into that exit lane, did you?

A. No.

Q. But you made him go out there, didn't you?

A. I was getting him out of the vehicle, yes.

Q. At that point, you had not seen any drugs in the car; [76] right?

A. No.

Q. You had not seen anything illegal, him do anything illegal at all except perhaps be in the left lane for two-tenths of a mile?

A. Correct.

Q. You got him out of the car to try to get consent for a search?

A. Not to try to get him to consent. I ask everyone for consent.

Q. You got him specifically out. Didn't Trooper Martin just say—didn't the other trooper just say, let's get him out and try to get consent, and you agreed?

A. We had a third party vehicle. So even if I don't need consent, I still ask for consent.

Q. That's not my question. What was your articulable reason to get him out of the car? What exactly were you searching to ask for consent for? What did you suspect?

A. There was some type of criminal activity afoot.

Q. Specifically, what type of criminal activity?

A. I don't know.

Q. No idea whatsoever?

A. Some type of criminal activity. No, I don't know.

Q. You were just hoping you would find something, weren't you?

[77]

A. No, I was basing it off indicators.

Q. Okay. Could you explain those indicators, please?

A. The nervous behavior, the different names, the no ID, the trip to Pittsburgh, rental vehicle, third party rental vehicle.

Q. Let's go back.

A. Not going into the center console.

Q. Start there. Center console. There's no reason for him to go into the center console. Was there any reason for him to go into the center console?

A. He couldn't locate his wallet at first.

Q. Was it in there?

A. I don't know.

Q. Was anything found in the center console that was illegal?

A. Illegal, no.

Q. Was anything found in the center console at all?

A. I don't know. I can't answer that.

Q. Secondly, you said trip to Pittsburgh. What's wrong with going to Pittsburgh?

A. Quick trip. From training and experience. New Jersey to Pittsburgh is a high drug trafficking area trip.

Q. That's a six-hour trip at least, seven-hour trip, isn't it?

A. Correct.

Q. That's not quick, is it?

A. What's that?

[78]

Q. Seven hours isn't quick, is it?

A. Well, it's a drivable distance.

Q. The other indicator you mentioned was no identification when, in fact, actually he did have identification and provided it to you. And by the time that you got him out of the car, you had already established everything in terms of his identity; correct?

MR. BEHE: Your Honor, again, there's like three questions all rolled into one.

THE COURT: I wish you'd break it down, too.

BY MR. THORNTON:

Q. He gave you identification, is that correct?

A. He gave me a piece of paper with a name and date of birth on it.

Q. That would be identification, wouldn't it?

A. Correct.

Q. And the next question. In terms of identity, at the time that you got out of the car, prior to the time that you were going to issue him the warning, everything in terms of his identity was already established; is that correct?

A. When I got him out of the car?

Q. Um-hum.

A. Yes.

Q. And everything regarding the New Jersey extradition matter was also established, correct?

[79]

A. Correct.

Q. So the other indicator—you mentioned he didn't give you ID, but, in fact, he did give you ID, the trip to Pittsburgh, and the console. And I think the other thing you said was that he was nervous, is that correct?

A. Correct.

Q. Was there anything else?

A. Third party rental vehicle.

Q. And what—but specific—I guess the only question I really want to ask is, there was no—you could not give me a specific indication of any type of criminal activity that you thought or you had proof that he was actually undertaking when you got him out of the car?

A. Ask that again. What are you asking me? I'm confused.

Q. When you got him out of the car, your object was to give him the warning ticket and then try to get consent from him to search the car; right?

A. You say, try to get consent. I knew I didn't need consent from him, but I ask anyway.

Q. When you got out of the car, your goal was to get him out of his car; correct?

A. Correct.

Q. You made him come around the back of the car and step to the side, correct?

A. Correct.

[80]

Q. And your goal after giving him the warning ticket was to get consent to search the car, right?

A. Request consent, yes,

Q. After the traffic stop was done, you wanted to ask him additional questions?

A. I think it was actually during the issuing the warning.

Q. Did you ever tell him he was free to leave?

A. No, he wasn't free to leave.

Q. He was not free to leave?

A. No.

Q. Did you ever tell him that?

A. No.

Q. Now when you testified at the preliminary hearing in this matter, which is Defendant's Exhibit

No. 9, on page 14, if we go to line 12, the question was asked of you—I guess you have to go to line 9. Line 9 is the question, which was, Now this is a result of the training that you indicated you received in interdiction and things of that nature? And your answer was, Yes. I issued the warning and gave him back his documents. And that's when I followed up with questioning. Question, But never told him he was free to leave? Your answer was, No. That part of the traffic stop was done. The written warning was done. And I moved onto additional questions.

Is that accurate?

A. Yeah.

[81]

Q. And that's what you swore to at the preliminary hearing, correct?

A. Yes.

THE COURT: I think this is where we're going to have to break. I'm hoping we'll be back in 15 minutes, but I'll ask you all to standby.

COURTROOM DEPUTY: Court's in recess.

(Recess was taken at 2:00 p.m. and proceedings reconvened at 2:35 p.m.)

(Video resumed playing.)

BY MR. THORNTON:

Q. So at that point, you got him out of the car and you patted him down; is that correct?

A. Yes.

Q. Just for the record, I would note that we are at 39 minutes 59 seconds into the videotape.

(Video resumed playing.)

Q. At that point, we just heard someone ask to see Mr. Byrd's tongue; is that right?

A. Yes.

Q. Who was that?

A. Trooper Martin.

(Video resumed playing.)

Q. So at that point, you specifically asked Mr. Byrd for permission to search the car, and he did not give it to you; [82] right?

A. He asked the question back to me.

Q. He did not say, yes?

A. Not at this point, no.

(Video resumed playing.)

Q. That was you speaking again?

A. Yes.

Q. Saying he had no expectation of privacy?

A. Yes.

Q. I guess you weren't aware that there is at least in the rental car contract that we have here, which is marked as Government's Exhibit No. 1, there is permission for the spouse to drive the car, isn't there?

A. Previous in the video, he stated to Trooper Martin it was a friend. He didn't say spouse.

Q. But you don't know whether that friend is a spouse or not, do you?

A. He said friend, not spouse.

(Video resumed playing.)

Q. So at 44 minutes and approximately 40 seconds, is that you getting into the car or Trooper Martin?

A. Me.

Q. Okay. Searching the car?

A. Searching the car, yes.

(Video resumed playing.)

[83]

Q. At 47 minutes 41 seconds, you have popped the trunk; is that right?

A. Yes, sir.

Q. And you have found nothing in the passenger compartment that was illegal, did you?

A. No.

Q. And is this in some way related to the left lane violation, this search?

A. What are you asking me? Is what related?

Q. Is this search of the car related to the left lane violation?

A. As a result of the left lane violation?

Q. Is it related to it?

A. The actual violation?

Q. Are you searching for other reasons other than the left lane violation?

A. Well, he admitted to snorting cocaine and there was a blunt in the car.

Q. But there was no cocaine and there was no blunt in the car, right?

A. No.

Q. Okay. Thank you.

(Video resumed playing.)

Q. Is the gentleman in the blue shirt the off duty state trooper that you described earlier?

[84]

A. Yes.

Q. And that's Trooper Swope?

A. Swope.

(Video resumed playing.)

Q. It's at 48 minutes 54 seconds. And it appears that Mr. Byrd has run off?

A. Yes.

MR. THORNTON: Your Honor, we can play as much further as the Government wants.

MR. BEHE: I don't think anything after this point affects what the Court needs to have before it to decide the issues.

THE COURT: All right. Very good.

MR. THORNTON: And we have no further questions of the trooper.

MR. BEHE: I have some redirect.

**REDIRECT EXAMINATION**

BY MR. BEHE:

Q. Trooper Long, I'd like, if you could, to help us out. Give us a better mental image of what you see out the windshield of your car when you pull out into the

left-hand lane on 81 and are trying to catch up to Mr. Byrd?

A. What do I see?

Q. Yeah. What's in front of you as you're looking out the windshield of your car?

[85]

A. A row of vehicles.

Q. All right. As you're approaching this row of vehicles from behind, they're in the left-hand lane as well?

A. Correct.

Q. What do they do one by one?

A. Get to the right-hand lane.

THE COURT: Are your lights on at this point?

THE WITNESS: No, Your Honor.

BY MR. BEHE:

Q. And at this point, is there a truck that gets over or is already over in the lane?

A. Yes.

Q. In the right-hand lane?

A. Yes.

Q. We heard Mr. Thornton suggesting it's unreasonable to have a car pull over between two trucks. And you get kind of the image in your mind that these are pretty close. Can you tell us or give us an idea of where these trucks were in relation to each other, meaning was it a safe distance that somebody could pull over after they got past the first truck?

A. It was a significant distance, yes.

Q. What would that be? If you are saying significant, what's that to you? Multiple car lengths?

A. Multiple car lengths. I mean, multiple tractor-trailer lengths.

[86]

Q. And your testimony is that Mr. Byrd did not pull into the right-hand lane despite that opening?

A. Correct.

Q. He continued in the left-hand lane?

A. Correct.

Q. When we see the video at the very beginning when it's playing, there is nothing on that video that shows the violation; correct?

A. Correct.

Q. Because you don't turn on the camera until your lights are activated?

A. Correct. The camera starts recording on its own once the lights are activated.

Q. Okay. So when you activate the lights, the recorder starts?

A. It goes back 30 seconds.

Q. You activated the lights after you saw the violation, correct?

A. Correct.

Q. So the violation is not on the camera?

A. Correct.

THE COURT: Can I ask a question at this point? This 30 seconds, what does it show? Is that 30 seconds of what you were seeing or is it—

MR. BEHE: It's the first 30 seconds on that video, [87] Your Honor.

MR. THORNTON: We can play it, Your Honor. It's the 30 seconds that doesn't have any audio to it.

MR. BEHE: The first 30 seconds of the video we played is what the recorder starts with once it's activated. So there's nothing that you're not seeing. That's the first 30 seconds that had been already recorded that it goes back and starts with.

THE COURT: I guess my confusion is, when you turn the lights on, the camera starts?

MR. BEHE: Yes.

THE COURT: The recorder.

BY MR. BEHE:

Q. The recorder is going continuously, correct?

A. Can I—

Q. Yeah.

A. Yeah. The recorder records non-stop, but it will only save 30 seconds prior to activating my lights. So every time—if I'm driving home in my unit, it's recording the whole way home. But if I never touch my lights, it just goes away. It doesn't save.

THE COURT: You mean it's running all the time?

THE WITNESS: Our cameras run all the time, yes, but they don't save unless our lights are activated or the record button is pushed. It doesn't save it.

[88]

THE COURT: It doesn't save, but the camera is running—

THE WITNESS: Constantly.

THE COURT: —constantly, okay.

THE WITNESS: Unless the car is powered off.

THE COURT: Okay.

BY MR. BEHE:

**Q. So your testimony is that the violation that you witnessed is what made you turn on the lights?**

A. Yes.

**Q. So that the violation is not on the video that we saw?**

A. Correct.

**Q. Now you were shown some exhibits by defense counsel, and specifically Exhibit No. 5. Do you have that in front of you? Do you have the exhibits in front of you?**

A. Yes.

**Q. Was it your testimony that these multiple identification documents were never presented to you at the time of the traffic step?**

A. Correct.

**Q. How did you get them to take photocopies of them?**

A. They were located during the search.

**Q. So these had nothing to do with any document that Mr. Byrd presented to you?**

A. Correct.

[89]

Q. You keep referring to a document with a name and a number on it that he handed to you as an identification document?

A. Correct.

Q. Is that what you call an identification document?

A. It wouldn't—I don't work in New York, I work in Pennsylvania. In Pennsylvania, if you are issued an ID, the ID would be exactly as the New Jersey identification on Exhibit 5. It would have your name, address, your assigned identification number. And it appears as a driver's license, but it's not a valid driver's license. So I have never seen a paper document in my nine years.

Q. Well, I guess what I'm saying is, why do you consider that to be an identification document?

A. I used the name and date of birth. That's really all it was used for.

Q. At one point on the video, there's reference to an SID number and it not being long enough or something. What is that?

A. State identification number. Every time you're arrested in a state, you're issued an FBI number and a state identification number. So you can run a criminal history through that state only.

Q. Now during the course of the stop, when you hand the warning to the Defendant, it sounds like you're apologizing to him for the delay; is that correct?

[90]

A. Yeah. I explained to him why it took so long, the confusion, and even questioned him about it, which, if you remember in the video, I was saying James Pearson, and he corrected me saying it was James Carter. I got the name confused from my car to speaking with him.

Q. And even though you learned that New Jersey was not going to extradite him, you had an individual at the side of the road who still had an active warrant out for him?

A. Correct.

Q. Who admitted to you that he had smoked marijuana?

A. Correct.

Q. And said that he had used cocaine?

A. Correct.

Q. Who was driving a rental vehicle that he didn't rent?

A. Correct.

Q. It was in the name of somebody who he said was just a friend?

A. Correct.

Q. And you were aware of his extensive criminal history?

A. Correct.

Q. Did you hear on the video the recording that was played here, it sounded like Trooper Martin saying to the Defendant when he is standing in the side of the road, if you want to fight, we'll fight?

A. Yes.

[91]

Q. Did you hear that at the scene or are you just hearing it now on the video?

A. I remember it from the scene, but, I mean, the video refreshed my memory, yes.

Q. Because I had asked you that earlier, and you said it was cordial. And I'm trying to figure out what—if you recall what gave rise to Trooper Martin saying, if you want to fight, we'll fight?

A. The entire encounter was cordial, even through the foot pursuit to the apprehension. There was no excessive force, no type of force used whatsoever. Mr. Byrd complied throughout the whole thing. It was more, at times you hear Mr. Byrd laughing on the video. I mean, the entire stop from start to finish was cordial. There was no threatening demeanor towards anybody or anything like that. It was said in a joking manner.

Q. I can say I don't think I've ever heard anybody describe chasing a fugitive as a cordial encounter?

A. Well, I mean—

Q. You're saying, when you caught up to him, he didn't resist?

A. Yeah. We've been in many foot pursuits where, you know, force is needed. I mean, he was ordered to the ground. He went to the ground. He was handcuffed. He was searched again. I mean, there was no threatening—I mean, even, you know, in the back of our mind, we knew his extended history. But he was [92] polite with us. I mean, there was—he actually made the statement to me that he'll run every time.

Q. He will run every time?

A. He will run every time.

Q. Was that before he ran or after you caught him?

A. After we caught him.

Q. Now as we are watching the video, it appears that the Defendant is pacing back and forth?

A. Yes.

Q. On the side of the road?

A. Yes.

Q. At one point, he appears to kneel down or sit down?

A. Yes.

Q. Were you able to observe that conduct while you were there searching?

A. Yes,

Q. Are you familiar with individuals that are under the influence of controlled substances?

A. Yes.

Q. You have an individual here who told you that he had smoked a blunt and ingested cocaine?

A. Yes.

Q. In your experience, did he give you reason to think he may have been under the influence of drugs?

A. Potentially. And you hear Trooper Martin even ask him if [93] he was, I believe he said, are you hopped up now, or something to that effect.

Q. Did you ever get consent from the Defendant to search the vehicle?

A. I believe he said, yes, but then he wanted to get—he said, yes, I'll get it for you. We told him we'd get it.

Q. Meaning what?

A. That he would get the blunt out of the car.

MR. BEHE: That's all I have.

THE COURT: Anything further, Mr. Thornton?

MR. THORNTON: Yes, Your Honor, just briefly, if I could.

**RECROSS EXAMINATION**

BY MR. THORNTON:

Q. Regarding Defendant's Exhibit No. 5, which is all the different cards found inside the car. Were you the one who found the cards?

A. I'm not a hundred percent. I can't answer that.

Q. Okay. But looking at Defendant's Exhibit 5, would you agree that these came from the car where Mr. Byrd was driving?

A. Yes.

Q. And you never specifically asked to see any credit cards, did you?

A. No.

Q. You didn't specifically ask to see the New Jersey ID, did [94] you?

A. I didn't know he had one, no.

Q. And you didn't ask to see his vehicle registration for a motorcycle, did you?

A. No.

Q. Or you didn't ask for the social security card—I know you asked for the number, but you did not ask to see the card, did you?

A. No.

MR. BEHE: I think the trooper said he didn't know anything about these cards and that's why he didn't ask for them, so I don't see the point in asking him why he didn't ask about something he didn't even know even existed.

THE COURT; Okay.

MR. THORNTON: That's fine, Your Honor. I have a couple more questions, if I could.

BY MR. THORNTON:

Q. I want to make sure I got the driver's license thing correct. If I could find the exhibit that I had previously—I believe Your Honor might have the washed one?

THE COURT: This?

MR. THORNTON: Yes, thank you.

BY MR. THORNTON:

Q. What we marked as Defendant's Exhibit 13, that's the actual piece of paper that was given to you by Mr. Byrd; right?

[95]

A. Correct.

Q. And that is entitled—what's it say on the top?

A. Well, it appears to be split in half. It says, customer receipt interim license driver's license.

Q. So that's actually an interim copy of an interim or receipt for an interim driver's license, is that correct?

A. Yes.

Q. And it has on it the date of birth, is that correct?

A. It's handwritten on there, 7/19/77.

Q. It's actually printed on the form?

A. Yes.

Q. Mr. Byrd was only the lead vehicle at the very beginning of the stop when you pulled out and followed him? He was the lead vehicle alone in the lane, there was no one else in front of him for approximately half a mile; is that correct?

A. Wait. You said he was the lead vehicle when I pulled out? No, I wasn't.

Q. I'll rephrase. Concerning the time you pulled out?

A. Yes.

Q. During that time when you first pulled out, he was not the lead vehicle; right?

A. No.

Q. It was a truck?

A. Yes.

Q. He alone was the lead vehicle for no more than—well, [96] you said two-tenths of a mile; is that right?

A. Yes. But, no, because the two-tenths of a mile is the violation. He was the lead vehicle after he passed the truck that you see on video. So it would be longer than two-tenths of a mile.

Q. But as soon as he passed the truck though, he got in the right lane, didn't he?

A. He traveled a short distance and then got over, yes.

Q. And lastly, you indicated that when you asked him for consent, at first he sort of said he would, but then he said, no, I'll get it for you? And after that, you guys said, no, we'll get it?

A. He said, I'll get it for you, yes. No one gets back—no one will retrieve any contraband.

Q. Right. But after that, he never gave you consent after that, did he?

A. No.

MR. THORNTON: Thank you. I have no further questions.

THE COURT: I think that's all.

MR. BEHE: Just one question to clean up a document that Mr. Thornton had, Exhibit No. 13.

**REDIRECT EXAMINATION**

BY MR. BEHE:

Q. You referred to those split pieces of paper as a receipt [97] for a license, but there's handwriting off to the side that says Tillman and some numbers. Is that your writing?

A. No.

Q. What was that on? Where did that come from? Is it part of those documents that were handed to you?

A. I don't know where it came from.

MR. BEHE: Okay.

MR. THORNTON: If I could follow-up?

**RECROSS EXAMINATION**

BY MR. THORNTON:

Q. Mr. Byrd didn't hand you a piece of—an 8 and a half by 11 piece of paper, he handed you the little tiny thing?

A. Yeah, the photocopy portion, yes.

Q. So whatever else is on that piece of paper is not what Mr. Byrd gave you?

A. Correct.

MR. THORNTON: Thank you. I have nothing further.

MR. BEHE: Nothing else, Your Honor.

THE COURT: Okay. Thank you, sir.

**TRAVIS MARTIN, GOVERNMENT'S WITNESS, SWORN**

COURTROOM DEPUTY: Would you please state your name?

THE WITNESS: Trooper Travis Martin.

COURTROOM DEPUTY: Thank you.

**DIRECT EXAMINATION**

BY MR. BEHE:

[98]

Q. Trooper Martin, can you tell us please how long you've been employed by the Pennsylvania State Police?

A. Nine years.

Q. What are your current duties and responsibilities?

A. I'm currently assigned to BCI, Shield Unit.

Q. And what is that?

A. It's highway criminal interdiction.

Q. What do you do?

A. We are—I'm in a marked unit on the highway looking for criminal activity flowing through the interstates of Pennsylvania.

Q. And have you been trained in that?

A. I have.

Q. And can you tell us a little bit about your training?

A. I've been trained through the Pennsylvania State Police Academy with identification of narcotics. And then I've had interdiction training, shield training through PSP, some DIAP commercial vehicle/motor vehicle training, which goes through interviews, what to look for in cars and stuff going down the highway. I've also had some Top Gun training, which is undercover training related to drug work.

Q. And specifically, what are some of the things that you've been trained to look for to be indicators when there is a motor vehicle stop or a suspected violation of the Motor Vehicle Code?

[99]

MR. THORNTON: Your Honor, we would object to this as irrelevant. He's not the trooper who stopped him. He's just the back-up trooper. So his—

THE COURT: I think it's okay at this point at least. You may answer.

THE WITNESS: We look for, we've been trained indicators of nervousness, how the operator answers questions, the way he presents himself, what may be in the car, rental vehicles, stuff like that.

BY MR. BEHE:

Q. Okay. Were you working on September 17th of last year?

A. Yes.

Q. In a marked unit?

A. Yes.

Q. And around 6:00 in the evening on that day, where were you located?

A. I was located in the center median approximately mile marker 75 on Interstate 81.

Q. Okay. Would that be closer to the Hershey or the Linglestown exit?

A. It would be almost directly in the middle, but a little closer to the Hershey exit.

Q. And traffic going to Harrisburg would be traffic going south on 81, correct?

A. Yes.

[100]

Q. And you were in a marked unit?

A. Yes.

Q. Do you know where Trooper Long was in relation to your vehicle, closer to Harrisburg or closer to the Hershey exit?

A. He was north of me.

Q. So closer to the Hershey?

A. Yes.

Q. Can you tell us what happens then, what you see?

A. As I'm sitting there, I get a response from Trooper Long relating that he's making a traffic stop, and I respond to his location.

Q. Once you get to the location, do you talk with Trooper Long about what the purpose was of the stop?

A. Yes.

Q. And what was it?

A. He related that the operator was traveling in the left lane without passing anybody, so he pulled him over for that.

Q. Did you approach the vehicle for any reason?

A. I did.

Q. Can you tell us why and what you did when you got to the vehicle?

A. I was talking to Trooper Long, and I was motioned by the operator, I believe Mr. Byrd, to come to the vehicle.

Q. So it's Mr. Byrd who summons you up to the vehicle?

A. Yes.

[101]

Q. Which side of the vehicle do you go to?

A. The passenger side.

Q. And tell us what happens when you get there?

A. I come up, I ask him what he needs because he waved me up. And he hands—he tells me about his driver's license. He had the driver's license number for me.

Q. He had the number for you?

A. Yes.

Q. What was that on?

A. He had talked to somebody on the phone and had gotten that number, so he was giving it to me to write down.

Q. So you wrote the number down?

A. I believe I wrote it down or he handed me the number. I don't recall.

Q. So this was not a formal document, it was a handwritten thing either you wrote or he wrote and gave to you?

A. Yes.

Q. Can you describe his demeanor for us that you observed when you first encountered him?

A. Immediately upon making contact with him, I saw that his hands were shaking and that he was moving all over the place in his vehicle.

Q. What else?

A. I observed that he just lit up a cigarette and that he was on the telephone as I approached.

[102]

Q. Did he make eye contact with you?

A. It was sparingly. He looked away from me most of the time. Every now and then, he looked at me.

Q. Do you know who he was talking with on the phone?

A. I took it to be the mother of one of his children.

Q. And how do you know that?

A. Because he said it was his—I believe he said it was his baby's mother out in Pittsburgh he was going to see.

Q. That he was going to see?

A. Yes.

Q. What did you do then at this point?

A. At that time, I took the information he gave to me and I went back to Trooper Long.

Q. Is there an exhibit up there marked 13 in front of you?

A. Yes.

Q. Do you recognize that handwriting and those numbers? I know it's a photocopy of a couple documents. But I guess my question is, is that what was either written by you or handed to you by Mr. Tillman—or Mr. Byrd?

A. Yes, Mr. Byrd.

Q. So now you go back to the vehicle that Trooper Long is in, correct?

A. Correct.

Q. What are the two of you trying to do while you're in the vehicle in terms of this stop?

[103]

A. Trooper Long had explained to me he wasn't sure if this was the correct information given as to who the identity of the operator was, so we were trying to figure out if this was who he said he was.

Q. And while you're there, did you make any attempt to clear up anything about the rental status of the car?

A. Yeah. We had a conversation as to who had rented the vehicle.

Q. Did you go back and speak to Mr. Byrd about that?

A. Yes.

Q. Can you tell us what he told you about who rented the car?

A. I believe he told me a friend had rented the vehicle.

Q. And did you relay that information to Trooper Long?

A. Yes.

Q. Was there a point in time when you again approached the vehicle or you and Trooper Long

approached and actually issued a warning to the Defendant?

A. Yes.

Q. Can you describe for us, please, the conversation that takes place when he's being given a warning?

A. Trooper Long relayed to him once again what the violation was and then talked to him about the length of the stop, why it had taken so long, because he had a warrant out for him and New Jersey didn't want him, but there was a warrant—we weren't sure if he was the guy because there was two different names [104] that were coming up when we ran his information.

Q. Can you tell us if, based on everything that you were aware of up to that point, you had suspicions that there might be some sort of criminal activity going on or some evidence of that in that vehicle?

A. I did.

Q. Were you aware of the Defendant's criminal history?

A. I was.

Q. Did it involve narcotics, weapons, assaults, things of that sort?

A. Yes.

Q. He had different identities?

A. Yes.

Q. And there was an outstanding warrant from New Jersey even though they didn't want him?

A. Yes.

Q. When Trooper Long began searching the vehicle, had the Defendant mentioned that he had a marijuana blunt in the car?

A. Yes.

Q. What is a blunt by the way?

A. It's a marijuana cigarette.

Q. And what did he say, that he had had it in there or smoked it or both?

A. He mentioned that it might be in there, that he had smoked a marijuana blunt.

[105]

Q. Was there any—did he say anything else about what other drugs he might have ingested?

A. Right when Trooper Long started searching, he said, I did snort some coke earlier.

Q. Did you ask him about that more?

A. I believe I had a brief conversation as to why he was smoking—or snorting coke.

Q. Can you describe the Defendant's demeanor on the side of the road after he's admitted that he's had a marijuana blunt and that he's ingested cocaine? How is he acting?

A. He was very agitated. He was bouncing—I call bouncing around. He was moving side to side, wouldn't stand still, looking around. Just very fidgety.

Q. At one point on the video that was played for the Court, you were heard to say words to the effect, if we got to fight, we'll fight. Do you remember that?

A. Yes.

Q. What caused you to say that?

A. Just based on his behavior, his past, and his close proximity to me. He kept getting close to me.

Q. What do you mean he kept getting close?

A. Like he walked closer to me. I had him standing to the front and to the side of his stopped rental vehicle.

Q. Did you search the trunk?

A. I did.

[106]

Q. Can you tell us what you found?

A. I popped the trunk, and I saw a large, like sort of like a laundry bag. And I just looked, pulled up the

end of it, looked inside, and saw what appeared to be body armor or like a bulletproof vest.

Q. What did you do at that point?

A. At that time, I leaned over to the driver's side where Trooper Long was and said, hey, I just found this, I'm going to detain him based on this, his past, and the way he's acting. And at that time, I retrieved my handcuffs from the front of my utility belt, and I told Mr. Byrd, I said, hey, I'm going to place you in cuffs, you're not under arrest.

Q. What happened then?

A. At that time, Mr. Byrd smiled at me and said, nah, and proceeded to run southbound on the shoulder of Interstate 81.

Q. Did you join in the chase?

A. I did.

Q. Were you the one who actually caught up with and took him into custody?

A. It was me and an off duty trooper, yes.

Q. Had you not seen the body armor, you had an individual who admitted to you that he had ingested marijuana and cocaine driving a third party's vehicle, did you believe you had probable cause to charge him with any offense or to search the car without his consent?

[107]

A. Yes.

MR. BEHE: That's all I have.

THE COURT: Cross-examine.

MR. THORNTON: Thank you, Your Honor.

**CROSS EXAMINATION**

BY MR. THORNTON:

Q. Trooper, in the part where you indicate to him, if you want to fight, you guys are just standing by the back of the car while Trooper Long is inside searching the car?

A. We're standing beside the car.

Q. And during that time, did you have your hand actually like on your holster when you were talking to him?

A. Probably in the vicinity, yes.

Q. And did you actually shoot tasers at him while he was running?

A. I did.

Q. Did Mr. Byrd ever identify himself to you as this James Carter person?

A. No.

Q. You indicated you said you believed he said a friend rented the car. Could he have said that his kids' mother rented the car?

A. He could have.

Q. When you looked in the car, as a result of all your training, I assume you looked around to see what was inside the [108] vehicle in case there was something important?

A. Yes.

Q. And you didn't see anything illegal in the car, did you?

A. Not in plain view, no.

Q. And you never found any blunt or any cocaine, did you?

A. No.

Q. Did you write a report at the end of all of this?

A. I did not.

Q. So you don't have any notes of any of this, it's just from memory?

A. Yes.

MR. THORNTON: Thank you. I have no further questions, Your Honor.

THE COURT: Thank you.

MR. BEHE: Just a follow-up, if I could.

**REDIRECT EXAMINATION**

BY MR. BEHE:

Q. Trooper Martin, you were asked, could something have been said or could something else have been said about whether it was his baby's mother or whatever it is. This is June of 2015, and this incident took place September of 2014. Would you rely on what you said on a tape as being more accurate than your memory here today about what might have been said?

A. Yes.

MR. BEHE: That's all I have.

[109]

THE COURT: Okay.

MR. THORNTON: I have nothing further, Your Honor.

THE COURT: I think that's all, sir. Thank you.

MR. BEHE: We have no other witnesses to call, Your Honor.

MR. THORNTON: Your Honor, at the beginning of the hearing, the Government raised the issue of standing, which I think we still have to address in some way. We have a witness who will be vital to the standing issue. We were unaware it was

going to be an issue prior to the hearing. I was wondering whether Your Honor would rather have Mr. Byrd testify at the time we have the other witness here or have Mr. Byrd testify now? I was only going to have him testify about how the car was rented.

THE COURT: Well, I think he should testify now at this point.

MR. THORNTON: Okay.

**TERRENCE BYRD, DEFENDANT, SWORN**

COURTROOM DEPUTY: Would you state your name, please?

THE WITNESS: Terrence Byrd.

COURTROOM DEPUTY: Thank you.

**DIRECT EXAMINATION**

BY MR. THORNTON:

Q. Mr. Byrd, if I could take you to the rental or how you got the rental car. Can you please tell us how that all occurred [110] and who rented the car?

A. My kids' mother, Latasha Reed, rented the car for us.

THE COURT: Keep your voice up. I can't hear you. Speak into the microphone.

BY MR. THORNTON:

Q. Pull the microphone toward you.

A. My children's mother, Latasha Reed, rented the car for us.

Q. Could you spell that name for us?

A. L-A-T-A-S-H-A. Last name. Reed, R-E-E-D.

Q. Where does she live?

A. We lived at the same address, 482 11th Ave, Patterson, New Jersey.

Q. How are you related to her?

A. Well, she was my fiancee. We was about to get married soon. I've been with her for 17 years. She is the mother of most all my kids. I have five kids with her.

Q. And is actually one of the children here sleeping in court?

A. Yes, that's my youngest daughter by Latasha Reed, yes.

Q. Were you there when she rented the car?

A. Yes. I was there—we was in the process of moving, and instead of using my vehicle, we let her use my Honda Accord, she would drive that to move all of her stuff out of the house and make the transition from one place to the next. So we got her a vehicle at that time because we only had one vehicle. My [111] van was stolen.

Q. So let me stop you there. You guys were moving and you only had one car?

A. One car, yes.

Q. Where did you go to rent the other car?

A. We went to Hertz up in Willow Brook Mall in Wayne, New Jersey.

Q. Were you there actually with her when she rented it?

A. I was there. I was actually in my car when she went and picked up that car.

Q. Did you go inside the establishment or anything?

A. No, I just sat in the car until the guy brung her the keys and go around the car.

Q. Where were you moving to?

A. I was moving to Pittsburgh to look for—see if the conditions was good. But also my job was down there, too. So I went to look for some residence.

Q. What was the arrangement between the two of you as far as the rental car is concerned?

A. We shared vehicles all the time, so I just said, you use the Honda Accord to move this stuff, don't use the rental, because we didn't want to destroy it, you know, putting boxes and household appliances inside it. So we just used the other vehicle for that.

Q. How did you get the rental contract?

[112]

A. She went in there. She went—actually she called and made reservations. We actually missed the first reservation appointment, and we went there late. So it was like around closing time that we got there. So they gave us the car.

Q. Did she actually hand you the rental contract or how did you get it?

A. Well, she gave it to me. We exchanged cars. We actually exchanged at the mall.

Q. What time frame was this in relation to your being stopped here on the highway? Was it a week before or a day before?

A. Same day. It was the same day. Maybe about 3:00 in the afternoon prior to that day, yeah, about 3:00, 2:30.

Q. That you rented the car?

A. Yes.

Q. And then you took it directly to Pittsburgh?

A. No. I went home, did some more moving stuff around to storage and everything like that.

Q. Thank you. I have no further questions.

A. Can I say something? I also have my storage thing that I rented the storage place that same day. It's in the part of the—

Q. Oh, that little card that has the numbers on?

A. That's the access code, yes. That was also rented on the same day, so we was moving stuff in and out.

Q. That was in amongst the documents that were taken from you [113] at the time of your arrest?

A. Yes.

MR. THORNTON: Thank you. I have nothing further.

**CROSS EXAMINATION**

BY MR. BEHE:

Q. Mr. Byrd, Government's Exhibit No. 1 in this case is the rental agreement. You didn't sign that document?

A. No, we didn't sign it.

Q. I said, you didn't sign it?

A. No, I didn't sign it.

Q. I think your lawyer is handing it to you. As a matter of fact, you didn't even go in the rental place when your girlfriend got the car; is that correct?

A. No, I was sitting in the front of the building.

Q. So you did not go in?

A. No.

Q. Your name does not appear on that agreement that's in front of you, does it?

A. No.

Q. There's a section on the second page, if you look for it. You got the second page there?

A. Yes, I see it.

Q. Down at the bottom, there's a number of lines to be filled in. One of them says, renter. Do you see those marks there?

THE COURT: What number are we looking at now?

[114]

MR. BEHE: This is the second page of Exhibit 1.

THE WITNESS: Yeah, I see renter.

MR. BEHE: Your Honor, that's Defense Exhibit 1, this is Government's Exhibit 1.

THE COURT: I don't know that I have that. Oh, yes, I do, I'm sorry.

BY MR. BEHE:

Q. If you go to the second page—you got it?

A. Yes, I'm on the second page.

Q. See the bottom where those empty lines are?

A. Yeah, I see it. It says, renter, and then additional driver.

Q. Where it says renter, is there something written there?

A. It looks like a bunch of lines. It don't even look like a signature.

Q. Isn't that Latasha Reed's signature?

A. No, that's not Latasha Reed's signature.

Q. Are you saying someone other than Latasha Reed rented this vehicle?

A. I don't have no idea, but that's not Latasha Reed's signature from what I'm looking at.

Q. Well, look at the front of the agreement, the first page?

A. That's Latasha Reed's signature at the bottom of the first page.

Q. And on the second page, are you saying that doesn't look [115] like her signature?

A. No.

Q. Where it says, additional driver, is your name listed?

A. No.

Q. There's nobody's name listed for additional driver, correct?

A. No, sir.

Q. You said that you rented this vehicle on the very day that you were stopped?

A. I said that Latasha rented the vehicle, not me, sir.

Q. That's right, she rented the vehicle. And it was rented on the day that you were stopped, correct?

A. Correct.

Q. September 17th of 2014. And if you look at the first page of the agreement, do you have that there?

A. Yes.

Q. The first page at the top left-hand portion, it says that it was rented, pick-up date and time, September 17th 2014 at 10:26 in the morning. Do you see that?

A. Yes.

Q. You were stopped at around 6:10 p.m. in Pennsylvania, correct?

A. Correct.

Q. Where did you go after you got the car?

A. Where did I go after I got the car? That day, I went [116] home. That day, she went and took the kids to the hospital to—they actually—I don't know if it was my daughter or my son had a doctor's appointment, a doctor's appointment on Market Street. Right before I left, I don't know the times, but I went home, actually threw my clothes inside the rental. Mr. Martin, you seen the box back there. Took my clothes out of the house and packed it up in the car. And then I met up with Latasha. And I did a few things in between that. And then I got on the road.

Q. So the car was yours essentially from the minute that your girlfriend rented it and turned it over to you in the parking lot?

A. Yes.

Q. It was in your custody?

A. It was in my custody. We decided to change vehicles, yes. We left the mall together, but I was driving the Ford Fusion.

Q. I guess I was asking where you went because from the time that you got the car outside of the rental place until the time you get stopped, and you have complete custody of the vehicle, somehow all that heroin and a bulletproof vest gets in the trunk?

MR. THORNTON: Your Honor, we're going to object. It's beyond the scope.

THE COURT: I'll sustain the objection.

BY MR. BEHE:

[117]

Q. Are these the only children you have, these five to Latasha?

A. Yes.

Q. Did you tell—

A. I have numerous other kids that I haven't had DNA tests with that I am supposed to be the father. I have numerous—during my time, I had a lot of girlfriends, you could say.

MR. BEHE: If I could have a second? That's all I have.

MR. THORNTON: We have nothing further.

THE COURT: All right. Thank you, sir.

MR. THORNTON: Your Honor, we do have one other witness we would want to call, but she is not here because we were unaware we would have to address this issue.

THE COURT: Who is that?

MR. THORNTON: Latasha Reed. I was wondering if we could continue this until a time that would be appropriate to have Ms. Reed here?

THE COURT: Yes. You'll need Mr. Byrd at any continued hearing.

MR. THORNTON: Yes, Your Honor. And I'll need to contact her. Up until this morning, I have not had any contact with her.

THE COURT: Okay. I will set a time when you get in touch with her and contact me.

[118]

MR. THORNTON: Yes, Your Honor, thank you.

THE COURT: Could I see counsel up here for just a moment, please?

MR. THORNTON: Your Honor, we would move the admission of our exhibits, if we could, which would be 1, 2, 3, 4, 5, 6, 7, 9, 11, and 13.

THE COURT: Okay.

MR. BEHE: No objection.

THE COURT: Those are admitted.

MR. BEHE: And I move for the admission of Government's Exhibit No. 1, if I have not done that, which was the rental agreement, Your Honor.

THE COURT: We'll admit that, too. We will adjourn for the day. Thank you.

COURTROOM DEPUTY: Court's adjourned.

(Proceeding adjourned at 3:30 p.m.)

CERTIFICATION

I, Wendy C. Yinger, Federal Official Realtime Court Reporter, in and for the United States District Court for the Middle District of Pennsylvania, do hereby certify that pursuant to Section 753, Title 28, United States Code, that the foregoing is a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

/s/ Wendy C. Yinger
Wendy C. Yinger, RMR, CRR
U.S. Official Court Reporter
(717)440-1535

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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF
PENNSYLVANIA

UNITED STATES OF
AMERICA

Case No. 1:14-
CR-00321

vs.

(Judge Caldwell)

TERRENCE BYRD,
Defendant

TRANSCRIPT OF SUPPRESSION HEARING
PROCEEDINGS BEFORE THE HONORABLE
WILLIAM W. CALDWELL
UNITED STATES DISTRICT COURT JUDGE
JULY 8, 2015; 10:35 A.M.
HARRISBURG, PENNSYLVANIA

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THE COURT: I understand, Mr. Behe, you have a witness to present.

MR. BEHE: Yes, I do, Your Honor. Mr. Walther.

ROBERT WALTHER, called as a witness, having been duly sworn or affirmed, testified as follows:

COURTROOM DEPUTY: Would you state your name, please.

THE WITNESS: Rob Walther.

COURTROOM DEPUTY: Could you spell your last name.

THE WITNESS: W-a-l-t-h-e-r.

DIRECT EXAMINATION

BY MR. BEHE:

Q. Good morning, Mr. Walther.

A. Good morning.

Q. Could you tell us what you do for a living?

A. I am a territory performance manager for the Avis Budget Group with rental cars and rental trucks.

Q. What exactly do you do?

A. I manage ten locations in the Baltimore area, go around every single day to make sure everything is in order, making sure numbers are—continue to be up, and just general managerial factors with a location.

Q. Are you responsible or have you been trained in the procedures that are used by the employees for renting vehicles?

A. Yes, sir.

Q. Is that part of your job responsibilities when you said you [4] were a compliance person?

A. Correct. I train all my operators through online training and then on-hands training at different locations.

Q. And is that standard with Avis and Budget?

A. Throughout the whole corporation, yes, sir.

Q. Can you describe for us, please, the process of renting a vehicle by an individual that would go to the counter?

A. So an individual will come into any one of our locations, they'll come to the counter, usually say they have a reservation or they need to rent a car or a truck.

At that point the operator will ask for a license and a credit card. They'll pull up their reservation, see exactly what kind of vehicle they need. From there, they will basically go through the checkout process as

far as what vehicle they need, what coverages, additional products, XM radio, things like that, and then also additional drivers.

Before they have the customer sign the contract, they go through what the customer selected and didn't select from our products. If they do ask for an additional—or they ask if anyone else will be driving the vehicle. If that person says no, then they will sign off on the contract and be on their way.

If they say yes, the agency operator will ask who will be driving. If the customer says my wife or husband, they will ask to see a license to make sure they're a licensed driver. [5] If it's going to be a son, brother, friend, then there will be a fee associated with the additional driver,

Q. All right. If we could back up then a bit. Is there a standard form that is used in this process that then has to be filled out and signed?

A. Yes. After every single contract is printed, the second page has basically the additional driver referendum that would go through saying who can be an additional driver without paying a fee and then also who will need to pay a fee with the additional driver.

Q. So if you are asked if there is an additional driver and the response is yes, what is it that is required before somebody—

A. Well, they will ask who the additional driver is, and if the customer states it's my husband or wife, the

agency operator behind the counter will ask if they are present so they can see that they are a licensed driver.

If they are not present, they will make notes on the contract, and that person's name will not be on the contract until that person returns to the location to validate the license. If it—

Q. Well, let's—before you go on there, so if the spouse is standing right there beside the person who is renting it, they're required to produce a license?

A. Correct.

[6]

Q. And would their name be added to the contract?

A. Their name would be added to the contract, the license number would not. It would just be to make sure that they were a licensed driver.

Q. Do you run the license to make sure that it's still valid or there's no outstanding warrants or anything?

A. No, sir, just the customer that is renting the vehicle.

Q. But that is required to be produced?

A. Correct.

Q. And the name would be on the contract?

A. Correct.

Q. And then you also told us there would be a situation where somebody would come in and say, my spouse is going to be an authorized driver, but they're not here, they're at work or something like that. Is that correct?

A. That is correct.

Q. And you said there would be a notation made. What do you mean by that?

A. In the system. At that point it would still just be the customer on the contract, but there would be in the remarks field in our business system saying that husband or wife will be an additional driver, need to verify the husband or wife's license.

Q. All right. What if there is—and what do you mean by "verify"? What would they have to do?

[7]

A. They would have to actually see a physical driver's license to make sure they were a licensed driver.

Q. So if the spouse was not there because of some other activity that kept them away from there, they would not be an authorized driver until they actually came into the place and showed a valid driver's license?

A. Correct.

Q. How are those notations kept in the system if a spouse isn't there but it's been indicated that they may also be a driver?

A. That would be in the remarks field that will only be seen by corporate employees. It won't get printed out on the contract. But that way if that husband or wife, spouse goes to any Avis Budget location, they will see right there on their screen the remarks that they still need to see a license to be a valid driver.

MR. BEHE: May I approach, Your Honor?

THE COURT: Certainly.

BY MR. BEHE:

Q. I'm going to show you what was marked at our earlier hearing as Government's Exhibit Number 1. Do you recognize that form?

A. Yes, sir.

Q. Is that the standard agreement that you were talking about earlier?

[8]

A. Yes, sir.

Q. Now, this one in particular was for a Latasha Reed. Look over that form, if you would, please, and tell me, are there any advisories or warnings on there about who is permitted to drive the vehicle that she was renting?

A. On the second page there is a paragraph regarding who is permitted to drive the vehicle other than herself.

Q. And on the first page where her signature appears around the middle—

A. Yes, sir.

Q. —is there a sentence in there that says, I affirm that I will be the only one driving this vehicle?

A. Yes, sir.

Q. What does it say?

A. "By my initials, I accept or decline optional services/products as shown above."

Q. Let's see if I can direct your attention to what I'm talking about here. No—

A. "No additional drivers allowed without prior written consent. Tickets, fines, and administration fees to be charged to this rental."

Q. And then is there a name that appears there?

A. It looks like a Latasha Reed.

Q. So by signing that, she indicated there would be no additional drivers without written consent. Correct?

[9]

A. Correct.

Q. On the second page of the form, is there anything in there that shows you that an additional driver was authorized to drive that vehicle?

A. No, sir.

Q. Is there any other name there except hers?

A. No, sir.

Q. Anything to indicate that anybody was with her at the counter that produced a driver's license?

A. No, sir.

Q. Did you pull this file up electronically to check that notes section that you described to see if at any other time Mr. Byrd or anyone else came to the rental agency and produced a driver's license to be an authorized driver?

A. I did, and I did not see anything in our remarks field.

Q. Do you—if police officers stop a vehicle, has it been your experience that they will often call to see whether or not the individual with the car is an authorized driver or not if it's a rental vehicle?

A. Yes, sir. The contract must stay in the vehicle at all times, so if the driver of the vehicle does not match the name on the contract, that's when they will usually give me a call to see if it is, indeed, a misprint on the contract or if it is an unauthorized driver.

Q. Had you been called in this instance, on September 17th of [10] 2014, and asked to pull up this contract because a vehicle operated solely by Terrence Byrd was stopped by the Pennsylvania State Police and you looked at that agreement, is there anything in there that would show that he is an authorized driver of that vehicle?

A. If I was called, no, I would not see anything saying that he was an authorized driver.

Q. Now, the testimony in this case in the previous proceeding was that Mr. Byrd sat outside in the car, did not go in with Latasha Reed, did not present a driver's license, and obviously didn't sign anything. Does that add to your opinion that he was not an authorized driver?

A. Yes, sir.

MR. BEHE: That's all I have.

THE COURT: All right. Mr. Thornton.

MR. THORNTON: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. THORNTON:

Q. The fact that he's not an authorized driver doesn't mean that Ms. Reed physically cannot loan him the car. It just means that he's broken your—she's broken your contract. Right?

A. The contract is then void.

Q. Right. And what happens at that point?

A. At that point we would recover the vehicle.

[11]

Q. But it's still possible for her, obviously, to loan it to somebody else if she wanted to do that?

A. Correct, sir.

Q. It would just be a violation of her agreement with your company?

A. Correct.

Q. The place where this was rented is 50 Route 46, Wayne, New Jersey. Is that one of your locations?

A. No, sir.

Q. Have you ever been there?

A. No, sir.

Q. You obviously weren't there on the day this car was rented, which was September 17th. You weren't at that location on that date, were you?

A. No, sir.

Q. Did you talk to anybody there?

A. No, sir.

Q. Do you know who the agent was who actually made this rental?

A. I do not. I just—it is notated at the bottom of the contract who checked out the vehicle by the name of Sachan in the bottom right.

Q. Can I see what—oh, right there. Okay. Thank you. And there's no way to tell from the signatures on there who the actual rental agent was, is there?

[12]

A. The Sachan is the rental agent that checked it out.

Q. Oh, okay. When you say "checked it out," that's the person who actually did the rental?

A. On the computer behind the counter, yes, sir.

Q. Okay. Now, did you speak to Sachan?

A. I did not.

Q. Is he still employed by your company?

A. I do not know.

Q. Do you have any idea on that day what exactly Sachan might have said to Latasha Reed?

A. As far as—

Q. If she could have someone else drive the car.

A. He would ask if there's any additional—anyone else that was going to be driving the vehicle. If Latasha replied with a yes, he would ask who that

individual was. If she replied with a no, then they would go through the rental process.

Q. You know that only from procedure, you don't know actually what happened on that day. Right?

A. Correct.

Q. You don't know if the place was crowded, do you?

A. No, sir.

Q. Do you know if Sachan was just about to get off work and wanted to get out quickly? Do you know that?

A. Do not know.

Q. Does it say what time on here that it was rented?

[13]

A. I believe at 10:26 a.m.

Q. Can you tell me where that is?

A. The top left under the pickup date and time, September 17th, 2014, 10:26 a.m. And it was returned September 20th, 2014, I believe at 4:00 p.m.

Q. Now, could that 10:26 have actually been the time that the reservation was for, or does it necessarily have to be the—

A. No, 10:26 would be the exact time the contract was printed out and checked out.

Q. And you obviously have no idea what the agreement was between Latasha Reed and Terrence Byrd regarding this car?

A. No, sir.

MR. THORNTON: We have no further questions, Your Honor.

MR. BEHE: I have no additional questions, Your Honor.

THE COURT: Thank you, Mr. Walther.

THE WITNESS: Thank you.

MR. BEHE: Thank you, Your Honor. That was the only witness on that particular point I was going to call.

THE COURT: All right. I assume then we—

MR. THORNTON: I have nothing else, Your Honor.

THE COURT: I assume we need to address the briefing schedule.

MR. BEHE: We have just this brief testimony. I'm sure it can be transcribed in short order, and we already have [14] a transcript from the earlier proceeding.

THE COURT: All right. We'll direct the transcription of this witness's testimony. And would you be filing the first brief?

MR. BEHE: I think that was the request of defense and that's—yes, I will be filing the first brief

THE COURT: Okay. Would 15 days following the receipt of the record be sufficient time?

MR. BEHE: That would be more than enough, Your Honor, yes.

THE COURT: All right. We'll request that, and then ten days to respond.

MR. THORNTON: That's fine, Your Honor.

THE COURT: Very good. All right. I think that concludes the matter. Thank you. Court is in recess.

(Whereupon, the proceedings were adjourned at 10:50 a.m,)

CERTIFICATE OF OFFICIAL COURT REPORTER

I, Lori A. Shuey, RMR, CRR, Federal Official Court Reporter, in and for the United States District Court for the Middle District of Pennsylvania, do hereby certify that pursuant to Section 753, Title 28, United States Code, that the foregoing is a true and correct transcript of the stenographically reported proceedings held in the above-captioned matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Dated in Harrisburg, Pennsylvania, this 8th day of July, 2015.

/s/ Lori A. Shuey
Lori A. Shuey, RMR, CRR
Federal Official
Court Reporter